

**A GURU RUNS
FOR CONGRESS**
ZACK MUNSON

the weekly

Standard

\$4.95



OBAMACARE FLUNKS

BY CHRISTOPHER CONOVER

FEBRUARY 17, 2014 • WEEKLYSTANDARD.COM

Contents

February 17, 2014 • Volume 19, Number 22



7



12



46

- 2 The Scrapbook *Traitor Joe's, funspirational facts, & more*
- 5 Casual *Joseph Epstein, gluten-free*
- 7 Editorials
- The Wages of Immigration* **BY JAY COST**
- Philistine in Chief* **BY ETHAN EPSTEIN**
- Saving Capitalism* **BY IRWIN M. STELZER**

Articles

- 12 A Misleading Cold War Analogy **BY ELLIOTT ABRAMS**
Don't count on containing Iran
- 14 Falling Down on the Job **BY EDWARD WHELAN**
State AGs shirk their duty to defend state laws
- 17 The More, Not the Merrier **BY MICHAEL WARREN**
Five Republicans vie for the open Senate seat in Georgia
- 18 No Shoving **BY ABBY W. SCHACHTER**
It's not a nudge when it comes from Washington
- 20 The Right Ideas . . . **BY TAMAR JACOBY**
For fighting poverty
- 23 The Fed and Inequality **BY CHARLES WOLF**
Zero interest rates have side effects

Features

- 26 An Obamacare Report Card **BY CHRISTOPHER CONOVER**
The student would do well to abandon this project and start over with a new approach
- 34 God Help Us **BY ZACK MUNSON**
Marianne Williamson wants to save America's soul (after the 33rd Congressional District's)

Books & Arts

- 38 The Picture of America **BY SAM SCHULMAN**
To see ourselves as others see us, diplomatically
- 41 The Connoisseur **BY JAMES GARDNER**
Bernard Berenson and the appreciation of art
- 42 Mr. First Amendment **BY GABRIEL SCHOENFELD**
Congress shall make no law abridging Floyd Abrams's brief
- 45 Dance to Excess **BY GINA DALFONZO**
Bob Fosse, demon choreographer
- 46 Fallen Idol **BY JOHN PODHORETZ**
Woody Allen and the culture of celebrity
- 48 Parody *Diary of an ambitious kid*

COVER BY JASON SEILER

The Fauna of D.C.

The Snowy Owl (*Bubo scandiacus*), as its name would suggest, is a longtime denizen of the frozen north, customarily ranging in the polar regions, upper Canada, Alaska, and northern Eurasia. In recent years, however, it has been migrating southward and, during the past few decades, has been sighted in places like Texas, Tennessee, and Florida. In the midst of this snowy, and decidedly frigid, winter, the Snowy Owl's progress makes a certain sense.

So it was no great shock, although a pleasant spectacle, when a Snowy Owl turned up in Washington, D.C., a few weeks ago. Perched on an office-building ledge a few blocks east of THE WEEKLY STANDARD's offices, it attracted the attention of birders, civil servants, global-warming skeptics, fans of nature, and, of course, the press. Why had *Bubo scandiacus* chosen the nation's capital? Are they interested in politics as well as small rodents? (Perhaps the two categories overlap?) In a city where things tend to grow rather than shrink, might the local population of Snowy Owls expand?

Probably not. For late one evening, at the beginning of this month, while Snowy Owl was foraging in McPherson

Square—local habitat of the late, unlamented Occupy movement—it was struck by a city bus, then an SUV, and knocked silly. The Metropolitan Police, to their credit, swung into action: They spent the better part of two hours tracking their prey, and



In recovery

then finally made an arrest, delivering a dazed *Bubo scandiacus* to the National Zoo for treatment.

THE SCRAPBOOK is pleased to report that the owl, since identified as a she, appears to be recovering from her head injury and fractured toe. She was found to be anemic, and some-

what underweight, which might be explained by the fact that the industrial-sized rats she was hunting in McPherson Square are usually laced with rat poison. Such is life in the Big City. For now, however, she is resting comfortably in a clinic that specializes in wild animals, devouring white mice in a temperature-controlled room, reportedly growing increasingly “feisty.”

The obvious question, of course, is what's next? Assuming that the Snowy Owl recovers fully, the ideal solution would be to find a good environment for release into the wild. Preferably with a mate. But the chances of finding a male *Bubo scandiacus* in Washington are probably slim, and it is possible that release into the wild would be a sentence of death.

THE SCRAPBOOK is reminded that Smokey Bear, the famous only-you-can-prevent-forest-fires character, was nicely personified by an injured bear cub rescued from a 1950 forest fire in New Mexico. Until his death in 1976, Smokey spent a pleasant life at the National Zoo, delighting local schoolchildren and becoming one of America's more famous and successful mascots. Any suggestions for a name for Snowy Owl? ♦

Traitor Joe's

While in the popular *Portlandia*-inspired imagination, Portland, Oregon, may be nothing but an endless array of organic food shops, “fair-trade” coffee roasters, and “subaltern”-themed, not-for-profit bookstores, Portland is still a mid-sized American city with the typical problems that mid-sized cities tend to face. Swaths of northeast Portland, for example, where the lion's share of Portland's black population lives, have for decades been beset by high

crime, joblessness, and out-and-out blight. Fred Armisen probably frantically locks his car doors if he ever (accidentally) ends up driving through the neighborhood.

So it came as good news to the residents of the long-deprived area when it was announced several months ago that a lot which had sat vacant for 20 years would be developed into a shopping center featuring a Trader Joe's grocery store and up to 10 other smaller retailers. But then the racial agitators struck.

First, the Portland African Ameri-

can Leadership Forum (PAALF) announced its opposition to the development on the grounds that it would raise local rents. Then the NAACP got in on the act; in late January, Dedrick Muhammad, the senior director of economic programs for the NAACP, wrote a piece in the *Huffington Post* opposing the project on the grounds that it could lead to “the displacement of low and moderate-income long-time residents.”

By the PAALF and NAACP's standards, any economic development—or indeed, prosperity itself—

COURTESY OF CITY WILDLIFE, INC.

would be bad, because it would undoubtedly push rents up. Do the activists prefer the neighborhood to deteriorate, so that rents would fall further? Muhammad failed to note that Trader Joe's is famous for its high-quality, low-cost groceries, which would be a boon to the area's poor residents, not to mention the fact that the contractor that was awarded the project is a black-owned business.

Well, the PAALF and NAACP got their way. Last week, Trader Joe's announced it would withdraw from the project, citing "negative reactions" from the local community. The company must have heard from different "locals" than the *Oregonian* newspaper did. When the paper interviewed area residents following Trader Joe's withdrawal, it found near-universal disappointment. "This is not what the neighborhood people want. This is terrible," said Kymberly Jeka, echoing a common sentiment. As the locals pointed out, Trader Joe's would have spurred economic development, provided much-needed jobs to the local community, and offered high-quality groceries at a good price. What part of "advancement" does the NAACP not understand? ♦

Funspirational Facts

Appearing at the National Prayer Breakfast last week, President Obama gave a speech on the growing threat to religious liberty around the world. As Obama speeches go, the message was a good one. But as is typical for Obama, the message was at odds with his commitment to the issue:

We believe that each of us is "wonderfully made" in the image of God. We, therefore, believe in the inherent dignity of every human being—dignity that no earthly power can take away. . . . [F]or the killing of the innocent is never fulfilling God's will; in fact, it's the ultimate betrayal of God's will.

Now pause for a second and reflect that those words were uttered by a man who twice voted against the Infants Born Alive Act, capped off a speech to Planned Parenthood with



the words "God bless you," and is currently bringing the full force of the federal government down on religious employers who don't think abortion should be covered by the company health plan.

Setting aside the cognitive dissonance on the value of human life, the main focus of Obama's speech—religious persecution abroad—was also at odds with his administration's commitment to the issue. It's nice to know that the leader of the free world thinks religious persecution is a problem, but what has he done about it?

Maybe we should ask the Rev. Dr. Suzan Johnson Cook. If you're scratching your head wondering

who that is, well, that just proves THE SCRAPBOOK's point. Until she resigned last fall, Cook was the ambassador-at-large for the Office of International Religious Freedom in the State Department. Obama was so unconcerned about religious freedom that he didn't even bother nominating anyone to head the International Religious Freedom Office before appointing Cook in 2010. Cook, aka Dr. Sujay, is the author of *Too Blessed to Be Stressed*, *A New Dating Attitude*, and *Moving Up: Dr. Sujay's Ten Steps to Turning Your Life Around and Getting to the Top!* Her website describes her as a "funspirational" speaker.

To be fair, Cook had been a New

York City police chaplain and served on a presidential commission under Clinton. But if you suspect Cook was not the most qualified for the State Department post, you're not alone. "Dr. Sujay's résumé, with no discernible international policy experience, her close ties to the Clinton administration, and several ill-defined business ventures, suggest that President Obama cares little about supporting religious freedom around the world," Anthea Butler wrote at the time in *Religion Dispatches*. Robert Seiple, a former International Religious Freedom ambassador and former head of the World Vision international Christian charity also expressed concern: "There is very little grace allowed for on-the-job training when it comes to international diplomacy," he said.

Cook did not surpass expectations. When she recently stepped down, she did so "amid criticism that she failed to stand up for some of the world's most persecuted victims of religious oppression," according to Religion News Service. While Chris-

tians in Egypt, Syria, Afghanistan, and Nigeria were being massacred, the ambassador-at-large was nowhere to be found. Nina Shea, an international human rights lawyer with the Hudson Institute, told Religion News Service she was shocked Cook "would be utterly silent and not speak about the largest, single persecution of the largest single religious minority in the Near East in 1,300 years," in reference to what happened to Egypt's Copts.

The Obama administration hasn't yet bothered to fill the vacancy and is "tight-lipped about the timeline for a decision," according to the *Washington Post*. A single State Department functionary is not the be-all-end-all of the U.S. government's efforts on behalf of religious freedom, but there's precious little evidence the Obama administration has a broader strategy to combat international religious persecution. This should be a pressing issue for the White House, but, as ever, Obama seems too blessed to be stressed about it. ♦

the weekly Standard

www.weeklystandard.com

William Kristol, Editor

Fred Barnes, Terry Eastland, Executive Editors

Richard Starr, Deputy Editor

Claudia Anderson, Managing Editor

Christopher Caldwell, Andrew Ferguson, Victorino Matus, Lee Smith, Senior Editors

Philip Terzian, Literary Editor

Stephen F. Hayes, Mark Hemingway, Matt Labash, Jonathan V. Last, Senior Writers
Jay Cost, John McCormack, Michael Warren, Staff Writers

Daniel Halper, Online Editor

Kelly Jane Torrance, Assistant Managing Editor

Julianne Dudley, Ethan Epstein, Jim Swift, Assistant Editors

Maria Santos, Editorial Assistant

Philip Chalk, Design Director

Barbara Kyttle, Design Assistant

Teri Perry, Executive Assistant

Max Boot, Joseph Bottum, Tucker Carlson, Matthew Continetti, Noemie Emery, Joseph Epstein, David Frum, David Gelernter, Reuel Marc Gerecht, Michael Goldfarb, Mary Katharine Ham, Brit Hume, Frederick W. Kagan, Charles Krauthammer, Yuval Levin, Tod Lindberg, Robert Messenger, P.J. O'Rourke, John Podhoretz, Irwin M. Stelzer, Contributing Editors

MediaDC

Lou Ann Sabatier, Chief Executive Officer

Joe Guerriero, Chief Revenue Officer

Grace Paine Terzian, Chief Communications Officer

Steve Sparks, Chief Operating Officer

Kathy Schaffhauser, Chief Financial Officer

Catherine Lowe, Integrated Marketing Director

Nicholas H. B. Swezey, V.P. Advertising

T. Barry Davis, Peter Dunn, Andrew Kaumeier, Mark Krawiec, Chasie Powell, Jason Roberts, Advertising Sales

Advertising inquiries: 202-293-4900

Subscriptions: 1-800-274-7293

The Weekly Standard (ISSN 1083-3013), a division of Clarity Media Group, is published weekly (except the first week in January, third week in April, second week in July, and fourth week in August) at 1150 17th St., NW, Suite 505, Washington D.C. 20036. Periodicals postage paid at Washington, DC, and additional mailing offices. Postmaster: Send address changes to The Weekly Standard, P.O. Box 421203, Palm Coast, FL 32142-1203. For subscription customer service in the United States, call 1-800-274-7293. For new subscription orders, please call 1-800-274-7293. Subscribers: Please send new subscription orders and changes of address to The Weekly Standard, P.O. Box 421203, Palm Coast, FL 32142-1203. Please include your latest magazine mailing label. Allow 3 to 5 weeks for arrival of first copy and address changes. Canadian/foreign orders require additional postage and must be paid in full prior to commencement of service. Canadian/foreign subscribers may call 1-888-597-4378 for subscription inquiries. American Express, Visa/MasterCard payments accepted. Cover price, \$4.95. Back issues, \$4.95 (includes postage and handling). Send letters to the editor to The Weekly Standard, 1150 17th Street, N.W., Suite 505, Washington, DC 20036-4617. For a copy of The Weekly Standard Privacy Policy, visit www.weeklystandard.com or write to Customer Service, The Weekly Standard, 1150 17th St., NW, Suite 505, Washington, D.C. 20036. Copyright 2014, Clarity Media Group. All rights reserved. No material in The Weekly Standard may be reprinted without permission of the copyright owner. The Weekly Standard is a registered trademark of Clarity Media Group.



You've read
them,
you've
watched
them—
now listen
to their
podcasts.

Browse the complete list of our free podcasts at
<http://www.weeklystandard.com/keyword/Podcast>

Hold the Gluten

Men, it is said, do not like to go to doctors. Clearly I qualify here. I have long considered myself a Christian Scientist, minus the Christian part. A realist in my taste in fiction, I am a fantasist in my views about physiology. I prefer, that is, to pretend that I do not have such organs as a liver, spleen, and kidneys, and like to think of the duodenum as a doo-wop group from the late 1950s.

My problem with doctors is that when I go to them, they tend to find unpleasant things wrong with me, but not always the right things. They send me for tests, which fairly often prove inconclusive. A few years ago my then-gastroenterologist informed me that blood tests revealed that I had celiac disease, a condition that damages the lining of the small intestines and prevents one from absorbing food properly. He suggested I go on a gluten-free diet. At the time I was suffering from a skin-blistering problem called—and best pronounced in a W.C. Fields accent—bullous pemphigoid, which was all the medical trouble I could handle at the moment, and so I ignored his advice about the diet. Nothing untoward happened, and six months later I called him to tell him so. “The analysis wasn’t really definitive,” he said. “Is that so?” I answered, and made a mental note to leave him, which I did.

Three or so years later, I encountered stomach trouble. Along with all the usual inconveniences stomach problems bring, I had lost four or five pounds, which I, already so lithe and dazzlingly beautiful, could not afford to lose. I went to my primary physician, who suggested I go on a fat-free diet. On a fat-free diet I couldn’t seem to

regain the lost pounds. Only then did it occur to me that I might after all possibly have celiac disease, long delayed, and so I put myself on a gluten-free diet, which seems to be working.

Gluten, Wikipedia informs me, is “a protein composite found in foods processed from wheat and related grain species, including barley and rye.” Gluten-free has in recent years



become a fad diet. Middle-class supermarkets now stock much gluten-free food. Some have entire shelves devoted to it, and one can easily enough acquire gluten-free breads, crackers, pasta, and even (flourless) cakes and cookies.

Being on a gluten-free diet has not been all that difficult, except for eating in restaurants. I meet weekly with two friends from high school days at a deli in Chicago called The Bagel, which has never heard of cholesterol let alone gluten, and there I can no longer order sandwiches or chicken soup with matzo balls, kreplach, or noodles, which is a deprivation. I don’t much mind taking a pass on cakes, pies, danish, and pastries, and liken my situation here to that of a reformed alcoholic I knew who told me that after 40 years of

serious drinking he gave up alcohol because he felt he had had his share.

After so many years of eating whatever I wanted, suddenly being diet-conscious feels strange. I used to mock, at least in my mind, health-food fad-dists. They seem, for one thing, so unhealthy-looking. I go into a health-food store in my neighborhood called J.D. Mills, run by an east Indian gentleman named Mr. Prakash, who drives a sleek gray Mercedes sedan. I go there to buy salted almonds and dried apricots. “Nonorganic,” I always instruct Mr. Prakash. The one small smile I’ve ever got from him was when I recently whispered to him that “that organic stuff will kill you.”

I never used to read labels on packaged food or cans, though now I tend to do so. Labeling on food is clearly going to become more and more prevalent. I note that a government regulation requires vending-machine operators to label the number of calories in the various snacks in their machines. Liberals, I have heard it said, don’t care what we do so long as it is mandatory.

The other night I was watching on television the movie *You’ve Got Mail* and in one of its final scenes noticed that Tom Hanks is eating a pretzel. I would not have noted this before I went gluten-free. This made me wonder if the day will come when movies, along with being graded X, R, PG-13, and the rest, will also have to announce that they contain scenes with gluten.

In the best of all possible worlds, the one that Dr. Pangloss inhabits, one will eat exactly as one pleases with no ill effects. Until that day arrives, though, I shall stick to my gluten-free diet, hoping it will temporarily ward off the *angelo di morte* and keep me out of the offices inhabited by those imperfect artists who go by the name of physician.

JOSEPH EPSTEIN

The Wages of Immigration

Last month, the House Republican leadership released its guiding principles on immigration reform. While mostly boilerplate, the document suggests that the House GOP envisions a bill similar to last year's Senate compromise spearheaded by Marco Rubio: enhanced border security in exchange for legalization of the illegal immigrant population; more visas for the highly skilled and permits for temporary guest workers; and a rationalization of the immigration process. The main difference is that the Senate bill offers a special path to citizenship for the entire illegal population, while the House principles offer it only to immigrants brought here illegally as children.

This difference is intended to mollify conservatives who warn that the Senate bill would pad the voting rolls with millions of new Latino Democrats. But that fear is overblown. Of the 11 million or so people in the country illegally, Pew reports that only 9 million are Latino, and not all of them would become citizens. The Latino turnout rate, moreover, was only 48 percent in 2012, and the bloc broke for Democrats 71-27. So the best case for Democrats is that they would net about 2 million more new voters than Republicans starting in 2028.

Instead, conservative critics should focus on two other problems. First, the border and visa enforcement provisions are only as effective as the follow-through by local and federal authorities, and the political calculations of Democratic pols will incline them toward lax enforcement, making these provisions of dubious value. Second, the Senate bill and House principles offer no protection for the wages and employment status of existing workers. This fact, often overlooked by critics of comprehensive reform, is its greatest weakness.

According to the Congressional Budget Office, the Senate bill would decrease average wages by 0.1 percent by 2023 (although over the following decade wages would rise with increases in productivity). What's more, this effect would not be evenly distributed:

The legislation would particularly increase the number of workers with lower or higher skills but would scarcely affect the number of workers with average skills. As a result, the wages of lower- and higher-skilled workers would tend to be

depressed slightly (by less than 0.5 percent) relative to the wages of workers with average skills.

Furthermore, the CBO projects that the bill would increase the unemployment rate, in part because of "imbalance[s] between the types of workers needed to produce the goods and services demanded in the economy and the skills and occupations of available workers." Again, the burden would fall particularly on the low end of the socioeconomic scale.

Conservative proponents of the House principles and the Rubio plan offer political and philosophical arguments in favor of passing a program along these lines. Absent an explicit commitment to protect wage and employment levels, however, they are not persuasive.

The economic case is that reform will increase economic growth, and indeed it will. CBO estimates that the Rubio bill would boost gross domestic product by 3.3 percent between 2013 and 2023. The GOP, however, should not support growth for its own sake, but rather

as the best way to generate broad-based prosperity. That is an important distinction, for there are policies that can increase growth without broadening the middle class—and if the CBO's analysis is correct, the Rubio bill is one of them. Wages would fall, unemployment would rise, and according to the CBO, per capita gross national product would fall by 0.7 percent in 2023. Thus, even as the aggregate economy would be larger, the average American's share of that prosperity would be less than without the Rubio reform.

This points to the tensions in the strategic alliance between the right and business. Conservatives are pro-business because they believe that, in general, business is good for everybody. If business presents a plan that hurts a significant swath of the country for its own advantage—such as the Senate bill—conservatives should oppose it. Indeed, they should do so loudly and forthrightly, for their biggest electoral liability is the widespread conviction that the GOP stands with big business instead of with the average person.

The political case is that Republicans have lost the popular vote in five of the last six presidential elections, and their only hope is to win the fast-growing Latino bloc. The problem here is lack of context. There are only three states



Bad news for the working poor

where comprehensive immigration reform might directly affect Republicans' prospects in the near term: Colorado, Nevada, and New Mexico. Arizona and Texas are solidly Republican; California is solidly Democratic; and the bulk of the Latino vote in Florida is Puerto Rican or Cuban, two groups who are mostly already citizens.

But what happens if the Republican party slackens in its commitment to protecting wages and employment? Several decades ago, the GOP began winning the white working class in the South, and more recently it has done so in the border states (Kentucky, Tennessee, and West Virginia). Yet its advance in the Midwest has stalled. Ohio remains less than a sure thing, even though its demographics have changed little. Pennsylvania and Minnesota are creeping closer to the Republican party, but have not yet flipped. Iowa, Michigan, and Wisconsin remain frustratingly elusive.

These are all states where Republicans regularly win statewide, yet lose presidential contests, in part because Democrats successfully tag GOP nominees as heartless plutocrats. The only way for the GOP to shatter this image is through an explicit and relentless commitment to pocket-book issues of concern to average Americans. A comprehensive immigration bill that lowers wages is a giant step in the wrong direction.

The cost-benefit calculus is simple. If Mitt Romney had won the Southwest, he still would have lost the election handily in 2012. If, on the other hand, he had swept the Rust Belt, he would have won by the same margin in the Electoral College that George W. Bush did in 2004. The Latino vote might be the fastest growing in the country, but Republican victory for the foreseeable future depends on carrying the Rust Belt.

Republicans, moreover, if they ignore the harm to workers from immigration reform, will be missing an opportunity to turn the tables on the Democrats.

For over a generation, Democrats have supported wage-suppressing policies demanded by rent-seeking unions, the environmentalist left, and the consumer rights movement, while still parading as the party of the people. And on immigration reform, the Democrats are kowtowing to ethnic pressure groups while harming the average worker.

This might explain why Democrats insist on bipartisanship now in particular. They were happy to pass financial reform legislation, health care, and a massive stimulus basically on party line votes. Immigration reform is one of just two salient issues where they've insisted on reaching across the aisle. The other was the Bush tax cuts. Not wanting to be cast as the party of tax hikes, the Democrats sought political cover on that issue. Similarly now, Democrats want to legalize new potential voters, but not at the expense of lowering wages and increasing unemployment, especially in the midst of the longest economic stagnation in generations. Enter the Republican party: Bring in the GOP to neutralize the wage issue, then reap the benefits down the line from the new voters.

In 1960, Barry Goldwater blasted the policies of Dwight Eisenhower as a "dime store New Deal." This was an exaggeration, but Goldwater was on to something. The Republican party did not enjoy enduring successes until Ronald Reagan's victory in 1980, when the party articulated a compelling alternative to New Deal/Great Society liberalism. So it goes with immigration reform. Offering a "lite" version of the Democratic proposal is poor political strategy, for the party will always be outbid. By contrast, offering a robust critique and a sensible alternative is the proven way to turn the party's fortunes around.

On immigration reform, far from echoing Democratic claims, Republicans should mount a vigorous attack that spotlights the negative effects the Senate bill would have on the economic stability of the working class.

—Jay Cost

Philistine in Chief

A graduate of two Ivy League institutions, the author of one highly regarded book (the less said about *The Audacity of Hope*, the better), and a former lecturer at the University of Chicago, President Obama has a reputation for being something of an intellectual. It's clearly part of his self-conception as well; "I'm comfortable with complexity," he's been known to say. And as anyone who slogged through David Remnick's *Ulysses*-length interview with him in the *New Yorker* last month can attest, Obama likes to laboriously argue both sides of any issue. It's as if he's trying a little too hard to live up to F. Scott Fitzgerald's dictum that intelligence "is the ability to hold two opposing ideas in mind at the same time."

So it was jarring, to say the least, when the president took a tasteless shot at that most esoteric of intellectual disciplines—art history—during a recent speech in Wisconsin. "A lot of young people no longer see the trades and skilled manufacturing as a viable career," he told an audience in Waukesha, "but I promise you, folks can make a lot more, potentially, with skilled manufacturing or the trades than they might with an art history degree." (He later walked back the remark, offering weakly, "I love art history.")

Obama's jab might have been offhand, but it was, nevertheless, disturbing. For one, the president used art history, essentially, as a punch line. He implied that there is something inherently risible about devoting one's time to studying mankind's highest cultural achievements. One

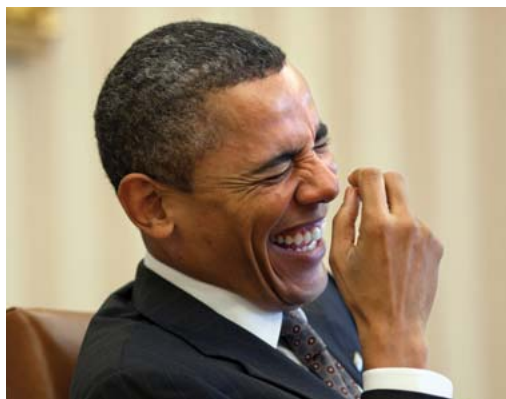
would be hardpressed to imagine an example of more naked philistinism. It may, in fact, be prudent for many people to learn a trade. But making that point doesn't necessitate taking a cheap shot at the small, self-selected group of Americans (less than 0.2 percent of working Americans with college degrees) who devote themselves to the serious study of art. What's more, it's unlikely anyone in America right now is agonizing over whether to pursue an art history degree at Sarah Lawrence or instead train as a welder. His shot was simply gratuitous.

Besides, even by his own cramped and mercenary standards, which imply that the *sole* consideration when choosing a course of study is one's future earning potential, Obama is wrong. That art history majors are poor, as the president implied, must come as news to the 6 percent of them who are in the top 1 percent of income earners. Indeed, a higher percentage of art history majors are "one percenters" than are chemistry, computer science, pharmaceutical sciences, microbiology, or *finance* majors. Even within the humanities, the study of art history is unusually lucrative. A recent report from Georgetown University found that among Americans who earned bachelor's degrees in the liberal arts, art history majors earned the second-most, behind only those who majored in U.S. history. None of this is particularly surprising, given how intellectually challenging the discipline is. No one who spent their college years attending toga parties and sleeping through their morning classes graduated with an art history degree.

Nor is it particularly surprising when one considers that art doesn't only provide spiritual and intellectual nourishment: It's also a business. A big business, in fact—the global art market was valued at north of \$60 billion in 2012, according to the European Fine Art Foundation. Art museums, meanwhile, are notching record visitor numbers and boast growing endowments. The Metropolitan Museum of Art in New York, to take just one outsize example, has an endowment of nearly \$3 billion. Is it any wonder, then, that the myriad art history majors who go on to become curators, gallery owners, or art dealers are doing quite well? Not to mention those art history majors who use their facility with the visual arts and their intellectual dexterity to become wildly successful fashion designers (Vera Wang) or big-time businesspeople (Fidelity Investments president Abigail Johnson).

All told, the average midcareer salary for an art history major is about \$59,000—almost \$10,000 higher than the median household income in the United States. Those jobs

in the trades and manufacturing that Obama assured his audience in Wisconsin were more lucrative than art history? The average midcareer salary of a skilled carpenter is \$44,000. Basic plumbers, meanwhile, earn \$41,000, about as much as journeymen electricians. The average hourly wage in Obama's beloved manufacturing sector, meanwhile, is \$19.60, reports the Bureau of Labor Statistics. That equates to an annual salary of roughly \$40,000. Even Obama's ballyhooed "green jobs" fail to generate actual green. Solar photovoltaic installers earn, on average, less than \$38,000 a year.



Art history majors will laugh last.

Where people get into trouble is in going tens of thousands of dollars into debt to earn putatively "useful" degrees that end up paying the equivalent of those aforementioned jobs in the trades. Those who major in elementary education, for example, with its average salary of \$41,400, or the culinary arts, with midcareer earnings of \$46,800, may be setting themselves up for a lifetime of penury. Starting sala-

ries—which are even more important, because students usually must begin repaying their loans within a year of leaving school—tell an even starker tale. Starting salaries for those who took the "pragmatic" course and majored in hospitality/tourism average \$36,200 a year. Horticulture majors, meanwhile, can hope for a cool \$37,000. The median starting income for journalism majors is \$31,000, meaning that fully *half* of journalism majors start out making \$30,999 or less. The choice, contra Obama, isn't between training as an electrician and studying art history—it's between training as an electrician and sinking tens of thousands of dollars into a "pragmatic" degree with no payoff.

So Obama is wrong on the facts. But perhaps what's most distressing about his dig at art history is what it says about the way he views the American people. Given his own liberal arts background (Obama's alma mater, Columbia, is noted for requiring all of its students to take a course in art history), one imagines that Obama doesn't actually dislike art history. He was probably just pandering. But in a way, that's even worse; it suggests that the president thinks that "Real Americans" in places like Wisconsin relish denigrating intellectual pursuits. As the president has it, in addition to religion, guns, and anti-immigrant sentiment, anti-intellectualism is just another thing that Americans "cling" to.

No, the problem with America is not that it has too many people studying art history. The problem with America is that it has a president who often fails to understand it.

—Ethan Epstein

Saving Capitalism

Conservatives of the world, unite! You have nothing to lose but your corporate sponsors. We must save capitalism from the capitalists. We must persuade our corporate and political classes that it is difficult for people to retain their belief that market capitalism works for them when they are struggling to find work, or to keep their homes, or to avoid declines in their living standards as their real wages stagnate and their taxes disappear into bailouts of banks and subsidies for solar millionaires.

Decisions once reported only in the financial pages are now page-one news and the subjects of countless blogs, and critics of capitalism are riding a wave of belief that inequality is rising and opportunity for the ordinary person is not; that the deck is stacked against the guy without access to a private cell phone number on K Street. Corporate elites who believe their decisions on matters such as compensation, plant closings, and foreign investment, to mention only a few items discussed in boardrooms and executive suites, should think again. Sure, some have political advisers to warn them how to cope, after the fact, with the often-predictably unpopular consequences of their decisions. But those consequences should be considered before the fact—before deciding to join a government-union-corporate axis to push for immigration reform that well might help the overall rate of economic growth and profits, but evoke a lack of enthusiasm from the unemployed programmers who will have to compete with the new high-skilled immigrants, or an unwelcoming attitude towards the unskilled newcomers who drive down wages. Or before handing out multimillion-dollar bonuses to bankers so recently bailed out by the taxpayer. Or before exposing valuable technology to theft by China's state-owned enterprises in order to sell a few more feet of rope in that emerging market.

There's no need to cater to occupiers, or to egalitarian hustlers, or to climate-change extremists. But there is a need to consider the effect of business decisions beyond quarterly profits and earnings per share, and of political decisions on people besides members of focus groups. Support for the preservation of the wondrous capitalist system that has produced unparalleled material prosperity is worth a few moments of thought, even by executives whose every minute is worth so much in the market. And even by the political class.

Take a break from reading the polls and weighing electoral prospects (nothing wrong with that—we all want to

keep our jobs), and spare a moment for consideration of future support for our political and economic system. We have long passed the day of the silent majority, and if howls of righteous anger are not to result in support for measures that will make unhealthy changes in our system, the majority must have a sense that government, as well as business, is on their side. Preservation of our system is the ultimate goal.

In the depths of the Great Depression, Italy's Benito Mussolini seemed to be converting a clapped-out economy into a model of state-run efficiency, with the cooperation of big business, enchanted by trains that ran on time. Never mind a bit of roughing up of any opposition. In Germany, Hitler's National Socialism seemingly had his nation on the road to economic recovery, with millions pouring into capitalists' coffers as the nation rearmed, and the annoying trade unions were tamed. Never mind a bit of broken glass here and there. In Soviet Russia, Lenin and Stalin commanded a wave of industrialization that was the envy of America's "useful idiots," dazzled by statistics of rising output and tours of Potemkin Villages, and eager to sell the Soviets the rope with which to hang themselves, as Lenin so pithily put it. Never mind the stacks of frozen corpses behind the myriad infrastructure projects.

Competing with these models of the future was a depression-ridden America, with millions out of work and out of luck, banks failing, and hotel clerks asking people who requested accommodation on high floors whether the rooms were for sleeping or leaping—or so my father, who nevertheless despised FDR's support for trade unions, told me. By many traditional measures, the New Deal was a failure, with double-digit unemployment eliminated only by stepped up war production. Roosevelt's farm program repealed the law of supply and demand in agriculture markets, his labor policies allowed workers to collude against employers when setting wages, his National Industrial Recovery Act involved central planning that was more Karl Marx than Adam Smith. But what those and other programs (some of which were certainly ill-conceived) did do was provide hope and change, hope that things would get better, and change that seemed to put government and reformed market capitalism on the side of the people. FDR might have been a traitor to his class, as his enemies proclaimed him, but he proved to be the savior of the very capitalists who failed to hear the tremors rumbling in the distance. Some traitor, some class, to paraphrase Winston Churchill's "some chicken, some neck" speech in Canada.

Then it was reforming liberals who saved capitalism. Now it is conservatives' turn to restore faith in market capitalism. True, the threat is not as great today: Fascism, National Socialism, and communism have been consigned to the scrapheap of history. But a recent challenger remains a contestant for economic model-to-be-emulated. *Bloomberg Businessweek* reports the emergence of a "Beijing Consensus" in Southeast Asia, as nations "have shifted their development strategy from one based on free markets to

one based on semi-free markets and an illiberal political system,” in the words of Indonesian scholar Ignatius Wibowo. True, this model of repressive state-run mercantilism suffers its own strains: Banks are stuffed with uncollectible IOUs from regime cronies, the masses are resentful of the massive inequalities and the conspicuous consumption of billionaire party favorites who stow their capital in New York and London while per capita income, as measured by the World Bank, languishes at the level of Tunisia, Albania, and Bosnia, three of the 91 countries China has yet to overtake. But to many Asians bad banks, inequality, conspicuous consumption, and cronyism seem as much American as Chinese problems these days. And a 7-plus-percent growth rate—to which American businesses contribute—sure beats 2 percent.

What conservatives must do is persuade the nation’s capitalists that preservation of the system by which they have done so well, and widespread international acceptance of our economic model, must be factored into what to them seem ordinary profit-and-loss, costs-and-benefits business decisions. If you think fostering such a broadening of visions, or as some might call it, personal restraint, is an easy chore, consider this.

A few weeks ago three exemplars of the best that corporate America produces gathered in solemn convocation to consider just how much Jamie Dimon’s toil in 2013 was worth to the shareholders of the company he leads as CEO and chairman of the board, JPMorgan Chase. Lee Raymond, former chairman and chief executive of ExxonMobil (whose retirement package came to \$400 million); Stephen Burke, CEO of NBCUniversal; and William Weldon, former chairman and chief executive of Johnson & Johnson, had no easy task. JPMorgan Chase was coming off a year in which it had paid some \$20 billion in fines for management miscues that led to violations of a variety of statutes and regulations, but in which its shares rose almost 40 percent and its customers expressed satisfaction with their dealings with the bank. That three-man compensation committee had to consider the red-hot market for corporate talent, and that Goldman Sachs’s Lloyd Blankfein had received about \$23 million for running a much smaller bank, part of his reward for laying off thousands of staff, reducing the compensation of several of the bank’s employees, and navigating Goldman through the maze of new regulations that are forcing it to make drastic changes to its business model. It also had to keep in mind the need to continue the long hunt for the Holy Grail of pay-for-performance in order to keep Dimon in hot pursuit of shareholder value: Much of his compensation will depend on the value of JPMorgan Chase shares in years to come.

Whether the 74 percent raise to \$20 million that the

compensation committee decided upon is the correct mixture of reward for past and incentive for future performance I leave to experts in the field of compensation. According to the usually well-informed James Stewart, writing in the *New York Times*, most compensation experts seem satisfied that Raymond and his colleagues did a reasonable job of balancing all the factors that go into pay. They avoided having Dimon opt for free agency by letting the \$6 billion “London Whale” trading fiasco and other management failures be bygones, while punishing Dimon by leaving him \$3 million short of his 2011 compensation.

But here’s the rub. Stewart reports that Professor David Larcker, a corporate compensation expert who is director of Stanford’s Corporate Governance Research Program, stressed, in Stewart’s words, that “the board’s duty is to shareholders, not the public at large.” Negative reaction by the

public, one member of the compensation committee told Stewart, was not allowed to influence the committee’s decision.

Which is why corporate America desperately needs advice from conservatives. Public reaction matters. In a period of protracted high unemployment, with middle-class wages stagnant, and millions of workers too discouraged to continue pounding the pavements and their computer keyboards in search of work, a decision to pay someone with Dimon’s mixed record some \$20 million, however that

compensation package may be structured, is of relevance to more than shareholders.

I am not arguing that the decision was wrong, given the frame of reference within which it was considered. After all, it is foolish to quarrel with Warren Buffett, who said, “If I owned JPMorgan Chase, [Dimon] would . . . be making more money than the directors are paying him.” Rather, I am suggesting that it would be in the long-term interest of America if its corporate leaders were to consider, along with the usual factors, a question more important than whether the shareholders will be pleased now, right now, with their decisions. To adopt such a narrow focus is to misunderstand the situation in which market capitalism finds itself. Irving Kristol famously noted that when businessmen slapped him on the back and urged him to go back to the academy and carry the flag for capitalism by explaining what a splendid thing the profit motive is, “Since such occasions do not lend themselves to philosophical discussion, I smile weakly, mumble something unintelligible, and change the subject as quickly as possible.”

Unfortunately, we find ourselves in times when a smile and a mumble just won’t do. Attention must be paid lest we stumble into a new, unattractive form of economic organization that can produce neither the freedom nor the well-being of our current system.

—Irwin M. Stelzer



Jamie Dimon: \$20 million CEO?

A Misleading Cold War Analogy

Don't count on containing Iran.

BY ELLIOTT ABRAMS



Jerusalem
The Israeli debate over Iran's nuclear program is, perhaps oddly, not yet heated. For now, the action is with the Americans: Israelis watch the negotiations nervously and without confidence, but there is little sense of impending doom—or impending war.

Elliott Abrams is a senior fellow for Middle Eastern studies at the Council on Foreign Relations and author of Tested by Zion: The Bush Administration and the Israeli-Palestinian Conflict.

Opinion polls show that Israelis think Iran is building toward a weapon, not toward a “capability,” and they pay attention to Iran's continuing acts of aggression (in Syria, for example), its support for terrorism, and the constant statements from Iran's leaders about eliminating Israel from the map.

So why no panic? Perhaps Israel's experiences with war and terror, facing Arab armies and more recently Hezbollah and Hamas, have immunized it from a panicked response. Perhaps there is faith in the Israel Defense Forces' ability to stop Iran if the need

arises. Or perhaps Israelis expect that in the end America will act to stop Iran from getting a bomb.

But during a recent visit I found another explanation as well—one that is more disturbing. Talking with members of what I'd call the “security establishment,” I found the occasional appearance of wishful thinking built around imagined Cold War analogies. That the Obama administration appears to harbor precisely the same hopes is no cause for comfort.

Here's the theory: Once upon a time the United States and the Soviet Union almost came to war, in the Cuban Missile Crisis, and there were decades of deep and belligerent hostility. But over time, with the growing desire among Russians for economic improvement and the good things of life and the weakening of the Communist ideology among the ruling elites, that hostility eroded. Diplomatic relations were opened between Moscow and Washington, class warfare on a global scale was replaced by “peaceful coexistence,” a hot line was established, summits proliferated, and relations got into a groove of peaceful competition and occasional cooperation. The Soviet Union became a status quo power with which America could do business. So we waited, and watched while their economy rotted and their system became unreformable, the rulers lost faith in it, and finally it fell. Without a shot being fired, as Mrs. Thatcher once said.

So, the theory continues, that's what we need to seek with Iran. Perhaps we are at an early stage; perhaps the religious elites, at any rate, haven't lost their fervor. But they've lost popular support, lost the youth and the businessmen, and have realized they need a compromise. They are willing to slow down their nuclear program. Now they are led by “moderates” like Hassan Rouhani and Javad Zarif, who recognize the need for change. Time will erode their system just as it did the Soviet system, so is a war really necessary and unavoidable? Sure, if they leap toward a bomb, if they misjudge us, we'll have to act or you Americans will. But in Cold War terms maybe it isn't 1962 and the missile crisis and

GARY LOCKE

DEFCON 2; maybe it's the 1970s or 1980s, and maybe there's only a decade or so to go. So maybe we just wait.

That Israelis should entertain such a theory is natural, considering the price they might pay for an attack on Iran. And while rehearsing this approach they always repeat that if at some point they see Iran jumping for the bomb, they will have to bomb Iran. Still, what is striking is how this theory—whether expounded by Israelis or by Obama administration supporters—misunderstands the Cold War and its lessons.

First, it has to be said that Mrs. Thatcher's wonderful line about Reagan winning the Cold War "without firing a shot" is false. Throughout the Cold War we fired shots. The greatest number of American casualties came in Korea and Vietnam, but on many other battlegrounds our soldiers and CIA agents, and our proxy forces, killed and died. Containment was not a series of speeches but a military strategy designed to impose costs on the Soviets and to constrain their behavior. Moreover, defeat on those foreign battlefields weakened the USSR and its alliance system—and perhaps more importantly weakened the party's hold at home. There is no better example of this than the Soviet defeat in Afghanistan. For we understood that the way a tyranny keeps power is by tyrannizing, which defeat lessens its ability to do. It shows the populace that the rulers are not invincible, have been beaten, and may be beaten again.

From this perspective, recent American policy toward Iran is demoralizing—both to Iranians seeking freedom and to us. The American refusal to act in Syria, the unwillingness to see that the real war there is with Iran and its allies and proxies, the decision instead to permit Iranian and Hezbollah forces to fight there and keep Assad in power can only have strengthened the Islamic Republic. An Iranian elite that watched the Americans draw a red line in Syria and then back away from it can only view the red line we have drawn on their acquiring nuclear weapons as unconvincing.

In fact, if the history of the Cold War was a series of American hot wars, large

and small, direct and indirect, that repeatedly confronted Soviet power, the record with Iran is the opposite. The Iranian regime has been killing Americans since the 1980s, in terrorist attacks in Lebanon and Saudi Arabia and through their very active role in Afghanistan and Iraq. For all those killings they have never paid a price, even though the U.S. government knew and spoke publicly about their supplying weapons, IEDs, training, and fighters to attack us. If vigorous American containment moved Moscow toward coexistence and weakened its ideological fervor over time, the lack of such American action should suggest that Iranian elites are far from that condition.

Second, the early Cold War was a time of nuclear proliferation. Stalin wanted the bomb, and so did Mao, and, more strikingly, so did the British and the French. Consider: We were in a tight post-World War II alliance with them in NATO, we were together in governing Germany, there were ironclad American commitments to defend Europe against the Soviets... yet the British and the French both said, "Thanks, that's great, but we need the bomb too." The lesson may be that if Iran gets the bomb, it is inevitable that the Saudis, Turks, and others will smile at possible American offers of defense arrangements and pledges, but see them as no substitute for their own little "*force de frappe*."

Third, the comparison of Soviet and Iranian elites is itself misleading, for the Islamic Republic is still led by men motivated by religious faith. It was hard enough for the West to come, finally, to an understanding of communism as a substitute faith; books like *The God That Failed* taught us the nature of Communist belief. But Communist ideology was a weak reed when compared with belief in one of the great world religions. While *Das Kapital* was written just three years before Lenin's birth, the ayatollahs have a real faith, not a substitute one. It is true that they have perverted Shia Islam with the state takeover of religion, and true that the older quietist school still has many adherents, but that does not suggest that the clergy

running the regime are beginning to second-guess themselves and are about to produce a Gorbachev.

What produced a change in Soviet behavior was the willingness of the West, led by the United States, to fight the Cold War on the ground—and the willingness to fight it ideologically. Several Israeli officials reminded me that Reagan negotiated with the Russians just as Obama is negotiating with Iran. And the United States and the USSR had diplomatic relations, constant diplomatic contacts, and even regular summit meetings. That's true but misleading, for while the Americans negotiated they also attacked: under Truman, Kennedy, and Reagan perhaps most forcefully. Reagan, after all, did not allow his desire for negotiations to prevent him from saying the Soviet Union was an "evil empire" that would end up on the "ash heap of history."

The United States spent vast sums over the decades on Radio Free Europe, Radio Liberty, and similar efforts to undermine the Soviets, harnessing intellectual candlepower from the days immediately after World War II to the campaign of support for Solidarity in Poland. The missing equivalent today would be a campaign to undermine Assad in Syria, Hezbollah in Lebanon, and above all the Islamic Republic itself—not just by sabotaging centrifuges but by sabotaging its belief system, empowering dissident groups, and providing far wider Internet access just as during the Cold War we provided fax machines. The lesson of the Cold War is that any moves toward negotiation and coexistence on the military and diplomatic level must be matched by greater ideological clarity and aggressiveness on our side, or the message will be that we are giving up the struggle. That message will be received both by the regime, which will become more confident and more aggressive, and by the populace, whose hopes for freedom and whose willingness to struggle for it will be diminished.

Such clarity is entirely missing from the Obama administration's approach to Iran, and has been since the Iranian people rose up in June 2009 and were

greeted by American hesitancy and silence. Today we have instead what Ray Takeyh has called “the Rouhani narrative”: the administration’s explanation that Rouhani and his crowd are moderates whom we must strengthen by entering into agreements that lessen sanctions and make compromises on the nuclear file. Build them up, the argument goes, or the Revolutionary Guards and the supreme leader will get tired of them and throw them out.

The lessons of the Cold War teach that this is entirely wrong. First, there’s precious little evidence that people like Rouhani and Zarif are “moderates,” in the sense that they lean our way on human rights issues, Syria, or the nuclear weapons program. During Zarif’s recent visit to Beirut he laid a wreath at the grave of the terrorist Imad Mughniyeh, who was responsible for killing more Americans than any terrorists before 9/11. That’s moderation? Second, we do not strengthen such reformist voices as exist when we appear weak. The best argument such “moderates”—if they exist—could make is that aggressive actions in Syria or support for terror overseas or refusal to compromise on nukes are dangerous for Iran and threaten its security interests. When we act in ways that undermine this argument and suggest that we will do anything to avoid a confrontation, we strengthen the hardest of hardliners. When President Obama reversed himself on Syria, does anyone think Iranian “moderates” were strengthened—or instead the regime elements saying, “Press on, they are weak, they will get out of our way”? The best gifts Reagan gave those Russians who were really reformers were rising American defense budgets, support for rebels confronting Soviet-backed regimes in places like Afghanistan and Nicaragua, and the endless ideological warfare against communism.

The lesson is not that an American or Israeli attack on Iran is inevitable or preferable, only that the way to avoid it is clear thinking, a forceful diplomatic, economic, and ideological stand against the regime at home—and a military pushback against its adventurism abroad. Facing the Obama

administration, Iran circa 2014 seems less like the Soviet Union of 1982 under the aging Brezhnev facing Reagan’s defense budgets and his ideological clarity than it does the Soviet Union acting in Angola, Nicaragua, and Afghanistan in 1979 and facing a Jimmy Carter who urged us to get over our inordinate fear of communism.

But after Carter came Reagan, the argument continues; doesn’t that teach us to wait, if necessary for another

president and a new foreign policy? If we are confident Iran will not cross the nuclear finish line, perhaps. But 2017 is far away; from the Soviet invasion of Afghanistan to the presidential election of 1980 was only 10 months. If 2017 may be too late, if Iran will reach a nuclear capability far sooner, erroneous lessons from the Cold War offer no comfort. Reagan did not wait out the Soviets, he beat them. We have no such strategy now toward Iran. ♦

Falling Down on the Job

State AGs shirk their duty to defend state laws.

BY EDWARD WHELAN

Last month, just 12 days after taking office as Virginia’s attorney general, Mark Herring abandoned his state’s defense of its marriage laws in a federal lawsuit brought by same-sex couples. Switching sides to join forces with the same-sex cou-

to refuse to defend his state’s marriage laws. Jerry Brown bailed out on California’s Proposition 8 (the 2008 measure that amended the state constitution to override a state supreme court decision that invalidated the state’s marriage laws). After Brown became governor in 2011, Kamala Harris, his successor as attorney general, followed suit. And last summer, in the wake of the Supreme Court’s decision invalidating the federal Defense of Marriage Act, Pennsylvania’s Kathleen Kane declined to defend a lawsuit against her state’s marriage laws.

What Herring shares with Brown, Harris, and Kane is an elementary confusion about the duty of a state attorney general.

Under well-settled principles of the American adversary system, a lawyer is ethically obligated to represent his client’s legal position zealously in court. That means, among other things, that if there are nonfrivolous arguments that can be advanced in support of a client’s position, the lawyer should advocate that position when the lawyer determines that it is in the client’s strategic interest to do so. Under narrow circumstances, a lawyer may



Mark Herring



Kamala Harris

ples, Herring explained that he had concluded that the state constitutional provision and statute “denying the right to marry to same-sex couples” violate the federal Constitution. Further, he wants Virginia to be “on the right side of history.”

Herring is not the first state AG

Edward Whelan is president of the Ethics and Public Policy Center and a leading contributor to National Review Online’s Bench Memos blog on constitutional law.

withdraw from representing a client in a matter. But he may never fail to advocate a defensible position simply because he personally believes it to be legally incorrect.

By virtue of his office, a state attorney general is the top lawyer for his client, the state. Except for laws still on the books that are clearly invalid under existing judicial rulings, the only sensible legal position to impute to the state is that its laws—the provisions of the state constitution and the statutes consistent with those provisions—are valid and enforceable. The attorney general's obligations as a lawyer therefore require him to vigorously defend any of those laws against challenge under federal law so long as there are reasonable (i.e., nonfrivolous) grounds for doing so.

From the beginning of our nation's history until the last decade or so, the laws of all states understood marriage as the union of a man and a woman. Notwithstanding some ominous language in the Supreme Court's anti-DOMA decision, the question whether such laws violate the federal Constitution—or, rather, whether a Court majority will say that they do—is unsettled. And whether or not you find them persuasive (as I do), it is indisputable that there are reasonable arguments that an attorney charged with defending these laws can responsibly make.

Herring and company don't argue otherwise. Indeed, Herring acknowledges that a defense of Virginia's marriage laws can be "responsibly and vigorously briefed and argued." He instead posits that his own personal legal conclusions—or, in Kane's telling emotive term, what she "feel[s]" about the federal Constitution—trump state law. But when he indulges his own personal legal views to conclude that defensible provisions of state law violate the federal Constitution, he is setting himself against his client.

It is no answer to maintain, as Herring does, that there are other governmental parties—two local court clerks—who will defend Virginia's marriage laws. It is Herring's job to do so, and it is his office that has the

resources and the expertise. If Herring is unwilling to carry out his responsibilities, he should step aside (or resign) and let a subordinate take the lead. His failure to carry out his responsibilities is likely to damage defense of the state laws. That, of course, is why the plaintiffs and their allies are so ecstatic about his decision.

By a somewhat different path, it's well settled that, except for laws that intrude on executive-branch prerogatives, the U.S. Department of Justice should vigorously defend the constitutionality of any law for which a reasonable defense may be made under existing precedents. Like the state attorneys general, the Obama admin-

If state attorneys general come to believe that they have discretion to refuse to defend state constitutional provisions and statutes that conflict with their own subjective legal judgments, then state laws will survive only at their sufferance.

istration acted irresponsibly when it instead decided in 2011 to formally abandon its defense of DOMA.

Let's not forget that when the House of Representatives stepped in to defend DOMA and announced that it had hired former solicitor general Paul Clement of the King & Spalding law firm as its counsel, King & Spalding suddenly caved to pressure from gay-advocacy groups and, in clear violation of its ethical obligations, abandoned the representation.

It's no coincidence, of course, that these derelictions of duty are occurring in cases challenging marriage. When advocates of redefining marriage to include same-sex couples pursue change through the democratic processes, they have incentives to persuade their fellow citizens. But when they resort to the courts to invalidate marriage laws, they perceive that

victory may well hinge on depicting as irrational bigots people who hold the same position on marriage that nearly everyone throughout American history (including President Obama) held until very recently. What better way to signal that the cause of defending marriage is beyond the bounds of acceptable thinking than to invite or pressure ambitious or compliant state attorneys general to throw in the towel?

In the long run, those on both sides of the marriage debate ought to recognize that much more is at stake than the battle over marriage. The very concept of the rule of law—of a realm of impartial decision-making according to neutral principles set forth in advance—depends on maintaining as distinct a line as possible between law and politics. To be sure, Supreme Court decisions of recent decades have done much to obscure that line. The indeterminate nature of the "living Constitution" approach that at least five justices apply means that intelligent lawyers can plausibly reach a broad range of legal conclusions on any open federal constitutional issue.

If state attorneys general come to believe, as Herring purports, that they have discretion to refuse to defend state constitutional provisions and statutes that conflict with their own subjective legal judgments, then state laws will survive only at their sufferance. The ensuing political pressure on state attorneys general to exercise that veto power will intensify. And the rule of law may fall beyond repair.

In his courageous 2011 letter immediately resigning his lucrative partnership in King & Spalding, Paul Clement offered some words of wisdom that Mark Herring and others reluctant to defend state marriage laws could learn from. The adversary system of justice and the rule of law, Clement explained, depend on lawyers not abandoning a client "because the client's legal position is extremely unpopular in some quarters." As for the desire to be "on the right side of history," Clement observed, "When it comes to the lawyers, the surest way to be on the wrong side of history is to abandon a client in the face of hostile criticism." ♦

The More, Not the Merrier

Five Republicans vie for the open Senate seat in Georgia. **BY MICHAEL WARREN**

Let's be clear. Cut through the spin. Get right down to it. In the Republican Senate primary in Georgia, there's only one candidate with a successful, lifelong career in business. There's only one candidate who has the experience and network of a statewide campaign. There's only one candidate with the fundraising prowess to have a full war chest from Day One, only one candidate who's a reliable and respectable conservative, and only one candidate who promises (incessantly, it turns out) to fight for "constitutionally limited government as our Founding Fathers meant it."

If you're not keeping count, that's actually five different viable candidates for the Senate. Among them are three sitting congressmen (Paul Broun, Phil Gingrey, and Jack Kingston), the former Georgia secretary of state and gubernatorial candidate Karen Handel, and businessman David Perdue. They're running to succeed retiring Republican Saxby Chambliss in a state that's been voting strongly Republican in recent decades. With three months before the May 20 primary, there's no frontrunner. No one is likely to win 50 percent in the crowded primary field, and there's no safe bet on which candidates have the best chance of making it into the runoff. One early poll shows all the candidates clustered together, with none getting more than 20 percent support.

"This is a very unique race," says Eric Tanenblatt, a Georgia GOP veteran and onetime chief of staff to Sonny Perdue, the former governor. The uncertainty of the primary is

beginning to worry some Republicans. If the party fails to coalesce around a winning candidate, Michelle Nunn, the moderate Democrat and daughter of former senator Sam Nunn, could pull off an upset. Losing Georgia would put Republicans further away from winning the Senate in a year when many incumbent Democrats are in trouble.

The consensus choice for the "wrong" Republican candidate is Paul Broun, the Athens-based antigovernment congressman who says evolution and the Big Bang theory are "lies straight from the pit of hell" and as recently as 2010 said he "didn't know" if Barack Obama was an American citizen. While the candidates have almost indistinguishable views on policy—they all support repealing Obamacare, oppose amnesty for illegal aliens before border security, and want to roll back federal regulations—in Broun's view, the others are all crypto-statists.

"I want to fundamentally change government and go back to the foundational principles of limited government and constitutionally limited government as our Founding Fathers meant it," he says. That means shuttering the Environmental Protection Agency and the departments of Education, Energy, Labor, and Commerce. And what about his opponents? Well, they haven't denied they *don't* want to close them.

"We've got to change the philosophy of the American people to demand a different kind of governance, and what I represent is actually the mainstream thought of America," Broun says. At a recent candidate forum, he said he would support impeachment proceedings against President Obama.

One influential Atlanta businessman says that if Broun becomes the nominee, "90 percent" of the city's business community, which constitutes the financial backbone of the state party, would throw their support behind Nunn. The prospect of a Broun primary victory keeps Republican strategists in Washington up at night. In private, top Georgia Republicans say Broun's nomination would be a "total disaster."

Phil Gingrey, an OB/GYN and congressman from metro Atlanta's northwest suburbs, might be a better-funded, more reasonable conservative alternative to Broun. But he also has a tendency to speak off the cuff in ways that horrify strategists. In January 2013, months after Missouri Republican Todd Akin lost a winnable Senate race because of his claim that women cannot become pregnant from "legitimate rape," Gingrey touched off a media firestorm when he said Akin was "partially right."

"That was an awkward attempt to explain the unexplainable," Gingrey tells me. "People, occasionally, are not as articulate as they would like to be."

So far there's been little effort by party leaders to mitigate these risks. Both Chambliss and his fellow Georgia senator, Republican Johnny Isakson, are staying quiet. "I'm going to let those guys slug it out, and I'm going to be there when they come out of the primary," Chambliss says. "The last thing in the world that'd be a good idea for me is to be involved in the primary," says Isakson gruffly.

The National Republican Senatorial Committee isn't getting involved, either, at least publicly. Says NRSC spokesman Brad Dayspring: "We are confident and comfortable that whichever candidate voters choose in the primary will offer a clear and preferable contrast to Michelle Nunn in the eyes of most Georgians."

What if they choose wrong? Their other options don't exactly excite. Karen Handel is the most familiar to voters and has the highest favorability ratings, but she's not raising much money. Instead, she sets herself apart from the House members as an

Michael Warren is a staff writer at THE WEEKLY STANDARD.

“outsider” who’s actually cut spending, both as secretary of state and as a county commissioner in Fulton County, the state’s most populous. When asked what spending she cut, Handel struggles to get specific.

David Perdue, despite being a cousin of former governor Sonny Perdue, is practically unknown to voters, owing largely to the fact that he’s never run for office before. A former CEO of Dollar General and of Reebok, Perdue says that’s an asset, and he’s hoping voters are looking for someone new. “I’m the only true outsider,” he says. The question is whether he can raise enough money to buy his way out of obscurity.

Republican hopes to avoid “disaster” may rest with Jack Kingston, the 21-year House veteran from Savannah. Kingston would slip most easily into the role Chambliss has played in the Senate: a friend to agribusiness, an advocate for the military (5 of the state’s 12 military installations are in Kingston’s district), and a south Georgian to counterbalance the influence of metro Atlanta. He also has enough fundraising connections and establishment support to make the most serious play for the runoff.

He’s not perceived as a conservative favorite, though. Kingston’s American Conservative Union lifetime rating is nearly 96, and he has an A+ rating from the National Rifle Association, but his opponents are hoping to cast him as an insufficiently pure creature of Washington. Kingston supported the recently passed \$500 billion farm bill and argues his work on the appropriations committee kept the cost from going higher. But it’s perfect fodder for his opponents in a Republican primary.

In a runoff between Kingston and Broun, the smart money would be on Kingston. “I don’t think Broun’ll be the nominee,” says Tanenblatt, with just a trace of doubt in his voice. Beyond a fervent base of loyal supporters, Broun may not have the ability to sustain a campaign through a runoff. He would need the support of outside groups and super-PACs, most of which are curiously neutral. So far, only

Citizens United has endorsed Broun. “We’re watching the race,” says Barney Keller of the Club for Growth.

But a runoff between Kingston and anyone else? That’s harder to predict. “I’d keep my eye on Phil Gingrey,” says Tanenblatt. Or maybe Handel, he says, whom he describes as “one of the hardest-working people in politics.”

Or maybe Perdue, a “fresh face” who might be just what the party’s looking for. Maybe even Broun could capture the anti-Obama fever among Georgia Republicans and find a path to victory.

After all, in this race, when you get right down to it, there are only five Republicans who have a real shot at winning. ♦

No Shoving

It’s not a nudge when it comes from Washington.

BY ABBY W. SCHACHTER

Cass Sunstein had to be the happiest academic in America following President Obama’s recent State of the Union address. After all, in just four short years he got his analysis of how people need help making good choices—a nudge in the right direction he likes to call it—from manuscript to a brand new retirement savings vehicle. Of course, Sunstein took a break from academia to become Obama’s first regulations czar, so the president was already a fan of the Harvard Law professor. But still, having an idea that you and coauthor Richard Thaler describe in the 2009 book *Nudge*:



Improving Decisions about Health, Wealth, and Happiness come out of the president’s mouth in the State of the Union is as big as it gets for any professional.

Too bad that’s about the most impressive thing about the new MyRAs.

“Let’s do more to help Americans save for retirement,” the president said. “Today, most workers don’t have a pension. A Social Security check often isn’t enough on its own. And while the

stock market has doubled over the last five years, that doesn’t help folks who don’t have 401(k)s.” (This formulation comes almost wholesale from Chapter 6 of *Nudge*.)

The answer, according to Obama, is offering a savings vehicle called a MyRA, as in my retirement account, to individuals who earn up to \$129,000

a year and couples who earn up to \$191,000 a year. The program, like the name, is similar to a Roth IRA, which is funded with after-tax contributions and is tax-free when withdrawn at retirement. A MyRA is invested in Treasury bonds and backed by the

federal government against losses. Initial contributions can be as low as \$25 and additional contributions can be as little as \$5. These starter retirement accounts can grow to a maximum balance of \$15,000 before the money has to be rolled over into a private-sector Roth IRA. The account can move with the individual if he changes jobs since it is a private account belonging to the employee. The Treasury Department says MyRAs are “designed to help savers start on a path to long-term saving and serve as a stepping stone to the broader array of retirement products available in today’s marketplace.”

As Lydia DePillis wrote in the

Abby W. Schachter, a senior fellow at the Independent Women’s Forum, blogs about the intersection of government policy and parenting at captainmommy.com.

THOMAS FLUHARTY

Washington Post, the MyRA is “basically the embodiment of . . . Sunstein’s ‘nudge’ philosophy, which pushes people by default into the choices that make most sense for them.” The technical term is “choice architecture,” which means that decisions are designed and limited in order to have individuals do something that is deemed ultimately good for them, even if they don’t realize it. In this case, as Sunstein and Obama both argue, saving for retirement is a good thing that more people should do but don’t. So here comes a government vehicle to get those who aren’t saving to start. And Sunstein believes that government should make its push to save for retirement even more aggressive by forcing workers to opt out rather than ask to set up an account and by having deposits made by automatic payroll deduction.

Richard Williams, the director of policy research at George Mason University’s Mercatus Center, disagrees that government “nudges” are in the individual’s best interest. Take buying a car, for example. As Williams explains,

the administration’s goal is energy efficiency. . . . That’s what the Corporate Average Fuel Economy (CAFE) standards, recently made stricter by the Obama administration, are all about. The assumption is that despite the recently increased price of gasoline, consumers are still too shortsighted to buy cars with better gas mileage, perhaps prioritizing other considerations such as cost or vehicle design. CAFE standards simply force the issue by making car companies produce more fuel-efficient fleets in the first place.

The possibility that individuals might prioritize something other than fuel efficiency is of no importance to the government because, as Williams concludes, “nudges are about achieving government goals, not personal goals.”

MyRAs fall into the same category when you understand that government goals are served when someone buys Treasury bonds, now that the Chinese aren’t anymore. As John Girouard wrote at *Forbes*, “the federal government is stuck with a lot of unpopular bonds, and one sure-fire way to get rid

of them is to sell them to the American public as a retirement savings vehicle. It’s a wolf in sheep’s clothing.”

Perhaps the Obama administration is hoping that the MyRA will serve dual purposes, though. As Sunstein proposed, people will get into the habit of saving for retirement, which they should be doing anyway, and the government will get someone to buy its debt. But this is wrong on both counts.

Sunstein is wrong that government is the correct vehicle to get individuals to change their behavior, even if one supports the behavior being encouraged. As Tom Bartlett just wrote in the *Chronicle of Higher Education*, “the federal government has spent nearly a billion dollars to help poor couples stay together—with almost nothing to show for it.” Indeed, the Family Expectations program is such a dismal failure that Bartlett wonders why it isn’t being shut down. And remember, too, that Family Expectations is a relatively inexpensive experiment in behavior modification compared

with various other federal programs.

Meanwhile, Sunstein and Obama are presupposing that saving for retirement is the most important goal for those who aren’t already doing so. It isn’t necessarily, and the reason is that too many individuals are facing a bigger problem than having enough money when they stop working. Before saving for retirement you ought to be putting something away for what used to be known quaintly as a rainy day. According to a study just released by the Corporation for Enterprise Development, “the percentage of households in the U.S. who lack the savings needed to weather a financial storm like a job loss or medical emergency is holding tight at 44 percent, suggesting that almost half of Americans are on the brink of financial calamity.”

That “almost half” of Americans are exactly the people Obama’s MyRA accounts are targeting. And if those workers are ruined financially today, what does it matter if they haven’t saved enough for tomorrow? ♦

The Right Ideas . . .

For fighting poverty.

BY TAMAR JACOBY

Chalk it up to the polarized times we live in—another sign of just how bad things have gotten. The past few weeks have seen a dazzling burst of intellectual activity and new ideas on the right: Republican elected officials, think tanks, journals, and columnists exploding with fresh thinking about poverty and inequality. But the ferment has been greeted mostly with derision—dismissed as just so much political posturing and jockeying for electoral advantage.

Among the charges being leveled:

Tamar Jacoby, president of ImmigrationWorks USA, is working to launch a Washington policy shop advancing a center-right agenda on opportunity and social mobility.

that the GOP proposals are disingenuous. That Republicans don’t really care about poor people. That there’s no way to reconcile an assault on poverty with the party’s commitment to fiscal austerity. As one critic put it, “Republicans aren’t really having a policy discussion. . . . They’re having a messaging discussion.” So there’s no point in talking—no need for Democrats to engage in any serious way.

How wrong that is—what a lost opportunity. Together, the new Republican voices have a lot to say, most significantly about the proper role of government in battling disadvantage and stalled mobility. And this fresh thinking should be sparking conversation, between and within

both parties, about a new, improved, 21st-century war on poverty.

Democrats dismissing the new GOP thinking fall back on a lazy stereotype: a caricature of Republicans as implacable enemies of government. Fair enough, left and right disagree about the role of government. And in the past, some Republicans have shrugged off concerns about poverty by arguing that all we need to do is get government out of the way—that the problem will then take care of itself as the dynamism of the free market kicks in.

But that's not the case today's new thinkers are making. Senators Mike Lee and Marco Rubio, congressmen Paul Ryan and Eric Cantor, Virginia Senate candidate Ed Gillespie, and others calling for a Republican assault on poverty: All agree on a basic paradox.

Yes, in their view, government run amok is part of the problem—too much government, bloated federal spending, government penalties for marriage, government penalties for work, government crowding out community, government crowding out the dynamism of the market, government-driven dependency, and more.

But the new thinkers' solution isn't no government. Senator Lee put it well in a speech at the Heritage Foundation last fall: "Just as we cannot spend our way out of poverty, we cannot really cut our way out either."

What needs rethinking is how we use government—and the short answer is much more strategically.

In the new thinkers' view, the traditional Democratic approach to poverty tried to do both too little and too much with government.

The Republicans' critique—and the alternatives they propose—rest on four basic premises.

First, the War on Poverty's biggest mistake was not aiming high enough. Welfare, food stamps, Medicaid, the minimum wage: All treat the symptoms of poverty rather than the causes. The government spends cash, or requires employers to, to help poor families live a little more comfortably—with more to eat, better housing, better medical care. But this approach does nothing to help people escape poverty.

In the new Republican view, this gets it exactly backward. The proper goal of an assault on poverty isn't helping people cope on a low income—the proper goal is upward mobility. None of the Republicans who have spoken out in recent weeks would eliminate the federal safety net, but all believe it's possible to dramatically shrink the number of Americans who rely on it, giving poor people the means to better their lives. This won't be easy—the roots of poverty run deep. But one place to start is with a job. According to the Census Bureau, in 2011, 32.9 percent of Americans who had not worked a full week all year were living in poverty. Among full-time, year-round workers, the poverty rate was a negligible 2.8 percent.

Second, accordingly, all the Republicans offering up ideas believe a new war on poverty should be structured around incentives to work. The GOP approach starts with sound fiscal and monetary policy to grow the economy and create jobs, while resisting misguided ideas, like raising the minimum wage, that would kill jobs for low-income workers. But the new thinking recognizes that this is not enough. We also need to draw the nonworking poor back into the world of work and onto the first rungs of the job ladder.

Among the proposals on the table to get people back to work: government programs that treat the working poor differently from those who aren't working; stronger work requirements for people receiving benefits; benefits that taper off gradually as individuals get jobs and start earning, rather than stopping abruptly and so discouraging work; refined low-income tax credits that refund more as workers earn more; federal loans to help poor people relocate where jobs are more plentiful; even cash bonuses for the long-term unemployed when they go back to work.

Bottom line: Instead of cash payments and in-kind benefits that shore up poor families year in and year out, well-designed incentives can deliver more for less, as government spends wisely to trigger a pivotal change in people's lives. This isn't just about saving money—although it would save

money, and surely that matters. It's about how to make a difference in the way poor families live.

The third premise behind the new thinking is that those closest to the problem know best how to remedy it, and government money should follow their choices, not try to impose a one-size-fits-all answer from Washington. This is the principle behind school choice, the nation's most effective antipoverty strategy, and the new conservative thinkers would extend the concept to other realms. Senator Rubio proposes to send all antipoverty funding back to the states to disburse as they see fit. Senator Lee wants federal education dollars to follow students—who could spend the money for college, if they feel that's the best route for them, or for other options like online learning, apprenticeships, or certification exams. Still other proposals would give poor people vouchers to pay for housing and education of their own choosing. What these ideas have in common: experimentation, flexibility, competition among service providers, and support for solutions that actually work on the ground.

The new thinkers' final premise: We should measure outcomes and reward success, spending most on the programs, whoever runs them, that help the largest number of people escape poverty. It's an obvious idea, long overdue, and it could take many forms. Federal policy should evaluate state efforts and reward the most successful. States should measure and reward effective local initiatives. And government at all levels should provide appraisals that help poor families become more informed consumers, making choices and spending the aid they receive on programs that will work for them.

The liberal critics aren't wrong: GOP thinkers are deeply skeptical of government. And whenever possible, Republicans do want to limit its reach so that the far more potent forces of civil society and the free enterprise system can kick in to lift Americans out of poverty. But the new thinkers all recognize that government can and must help. The answer isn't just less government—it's also better government. ♦

The Fed and Inequality

Zero interest rates have side effects.

BY CHARLES WOLF

Income inequality in the United States has been increasing for a generation. The share of pretax income received by the top 1 percent of earners rose from 7.8 percent in 1973 to 17.4 percent in 2010. A broader and widely used measure of inequality—the Gini coefficient—indicates that inequality for the entire range of income recipients rather than only the top 1 percent has risen by 26 percent since the early 1970s.

A caveat: These indicators, as well as most other indicators of inequality—and virtually all public commentary about it—relate to income before taxes. Income inequality after taxes is substantially diminished because of the offsetting effects of taxation. Specifically, the top 1 percent of income recipients pay 37 percent of total tax revenues, and the top 5 percent and 20 percent pay 59 percent and 70 percent, respectively. The bottom 50 percent pay little or no income taxes.

Pretax income inequality has been driven by long-term societal trends that are numerous, complex, and hard to change. Although the drivers are well-known, their relative strength is not. They include education, parenting and family structure, neighborhood, immigration, globalization, and IT-based technology, which often substitutes fewer high-skilled and higher-salaried workers who are fewer in number in place of more numerous and lower-paid labor. Another of the long-term trends is the inertial effect of poverty

itself—poverty typically and strongly impedes emergence from it. These drivers continue to affect income inequality in the United States, as well as in many other countries.

Adding to the long-term drivers, and providing a neglected and unexpected but significant boost to rising inequality in recent years has been the Federal Reserve's pursuit of sharply eased monetary policy. Conceived as a necessary means to stimulate the economy and accelerate the slow pace of recovery from the Great Recession, eased monetary policy (aka Quantitative Easing) injected as much as \$4 trillion into the monetary base by Federal Reserve purchases of mortgage-backed securities in order to lower long-term interest rates, while maintaining near-zero short-term rates through control of the Federal Funds rate. The result has been an increase in income inequality in recent years as an unintended side effect of monetary easing, apart from and additional to the long-term trends mentioned earlier. That's because this monetary policy has induced rapid growth of profits while wages stagnated, hence an increased share of profits and a reduced share of wages in gross national income.

The process has been accompanied by a surge of equity markets to record highs (up 30 percent in 2013), burgeoning IPOs, heightened activities of hedge funds, private equity funds, venture capital financing, and a generalized boom in the financial services industry. Managers of these financial endeavors are uniquely equipped to nimbly deploy the low interest rates in ways that boost the profitability of their activities. As a

result, the financial sector's annual profits increased by \$200 billion between prerecession 2007 and 2013. The financial sector's profits rose from 18 percent of total corporate profits preceding the recession in 2007 to 23 percent in 2013.

Increased financial sector profits mainly accrue to upper-income recipients, who are relatively few in number, while the decreased share of wages affects the relatively larger number of workers—thus, providing a strong fillip to inequality. Since the Great Recession, the share of wages in national income has decreased rapidly—from 65 percent in 2008 to 61 percent in 2013—while the corresponding share of profits has risen from 11 percent in 2008 to 15 percent in 2013. Although small in percentage terms, the shift is quantitatively large. It represents \$600 billion less for the wages and salaries of the relatively numerous middle- and lower-income recipients, and correspondingly more for the much less numerous profit recipients, who mainly were already higher earners. Although inequality has also increased among recipients of wages, the far smaller number of profit recipients has had a dominant effect on income inequality in recent years.

Increased inequality is not simply an unintended consequence of eased monetary policy; it is also quite remote from the prescribed mandates of the Federal Reserve: principally, market stability and, as a secondary goal policy, full employment. Those who advocate both monetary easing and reduced income inequality should be aware of the tension between them. The more one is concerned with slowing, let alone reversing, the rising pace of inequality, the sooner one should favor “tapering” quantitative easing. Conversely, the more one is concerned with stimulating growth, the more one should favor continued easing. The Fed's recent announcement of two successive monthly reductions in the quantity of easing is an evident move favoring reduced inequality.

Accurate measurement of inequality is itself problematic. Probably the

Charles Wolf holds the distinguished chair in international economics at the RAND Corporation and is a senior research fellow at the Hoover Institution.

most-widely used indicator is the Gini coefficient, which measures the gap between each percentage of the population and the corresponding percentage of income (or wealth) received by that percentage. If 5 percent of the population receives 5 percent of the income, and all other population percentages receive the corresponding income percentages, then the Gini coefficient is 0, indicating maximum equality of income distribution and no gap between population percentages and income percentages. At the other extreme, if a single recipient were to receive all income, the Gini coefficient would register a peak of 1, representing maximum inequality.

Whether any particular level or specific change in the coefficient—either closer to or farther from equality—is “good” or “bad” cannot be inferred from the Gini number alone. This crucial inference depends on what accounts for the underlying change in the inequality number. Is the change due to positive effects of greater work

effort, higher labor productivity, innovation, entrepreneurship, improved technology, more efficient management; or instead, is it due to the negative effects of favoritism, nepotism, collusion, bribery, fraud, insider trading, special privilege, or other forms of maleficent behavior?

For example, is increased income inequality attributable more to such positive effects as those resulting from Steve Jobs and Apple, Bill Gates and Microsoft, and Larry Page, Sergey Brin, and Google; or instead to negative effects such as those emanating from the likes of Ken Lay, Jeff Skilling and Enron, Dennis Kozlowski and Tyco, and Bernie Madoff’s Ponzi schemes? Quite different policy implications follow from the answer. And if the answer is neither all one, nor all the other, how can the positive elements be sustained and the negative behaviors reversed? The answer to this question lies more in the realm of improving corporate governance than in changing public policy.

According to recent U.S. census data, the Gini coefficient for the United States lies midway between .45 and .49, having risen from a low of .39 in 1968 to a high of .48 in 2011. European countries show less inequality than the United States, as do Japan, South Korea, and Israel. The Gini coefficient estimate for China is higher than that of the United States, as is the estimate for Brazil.

These estimates are, of course, based on income before taxes. As noted earlier, after-tax income inequality is substantially less: The Gini coefficient for after-tax income in the United States is perhaps as much as 10 percentage points lower than the before-tax estimate.

It is doubtful that this large a change in the Gini indicator would be found in the after-tax estimates for most other countries. It is also doubtful that quantitative easing has had as large an effect on income inequality in other countries as it has in the United States. ♦

Make Keystone XL an American Success Story

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

In the same amount of time that the Keystone XL pipeline application has been under review by the Obama administration, the Hoover Dam, the New Jersey Turnpike, and the Empire State Building were built—a clear indicator of how cumbersome and political today’s permitting process has become. After more than five years, the proposed Keystone XL pipeline is still largely just a plan and not a completed part of our critical infrastructure system.

Though Keystone XL cleared a significant hurdle—again—on January 31 when the State Department issued a positive Environmental Impact Statement, the wait is not over. The project now shifts into a subjective phase of review during which the administration determines whether building the pipeline is in the national interest. But the administration refuses to give a timeline on when the

decision will actually be made.

More than 70% of Americans aren’t sitting around and wondering. They already know that the Keystone XL pipeline is in the best interest of the nation. There is no justification for further delay.

For starters, Keystone XL would add stable energy from a reliable source to our supply—safely and efficiently. The State Department has studied the project for 1,960 days and issued five reports, reaching the conclusion that the pipeline poses minimal environmental risk. Moreover, though many activists believe that blocking Keystone XL will halt development of oil sands, the department’s analysis makes it clear that Canada will develop those resources with or without the pipeline; the country will simply ship them using different modes of transportation and to other countries.

The Keystone XL pipeline would not only transport fuel safely, but it would boost economic activity along the way. Building the pipeline would create more than

42,000 new jobs while adding \$3.4 billion to the economy. The pipeline would generate more than \$5.2 billion in property taxes for communities on the route, pumping cash into state and city coffers for schools, law enforcement, and local projects.

Finally, the administration’s continued delays send a signal to companies around the world. Do we want to show international investors that America is open for business and a welcome place for their job-creating investments? Or do we want to send the message that they’re better off doing business elsewhere?

As we enter the next phase of review, the public will have an opportunity to make their views known—but then the dillydallying must stop. The Keystone XL pipeline is clearly in the national interest. Let’s make it a great American success story, not a cautionary tale of missed opportunity.



U.S. CHAMBER OF COMMERCE
www.uschamber.com/blog

An Obamacare Report Card

The grades are bad so far—and likely to get worse

BY CHRISTOPHER CONOVER

Perhaps the most unpleasant aspect of my otherwise quite enjoyable job as a college professor has been the requirement to assign grades to students. Given that we're now about halfway through implementation of the Affordable Care Act—which even President Obama is happy to call “Obamacare”—it seems appropriate to assign midterm grades. These are not intended as a forecast of the final grade; moreover, implementation of Obamacare is the responsibility of many thousands of individuals, not just one. Nevertheless, as President Truman's legendary Oval Office desk sign reminds us, “The buck stops here” when it comes to presidential leadership. So whether President Obama likes it or not, the public and historians are likely to base their assessment of his performance on how well his “signature piece of domestic legislation” is implemented.

FIRST GRADING STANDARD: PROMISES VS. PERFORMANCE

Both as a candidate and as president, Barack Obama has made at least 80 promises related to health care. For purposes of grading, I have focused on the 8 most consequential.

PROMISE #1: UNIVERSAL COVERAGE. Candidate Obama promised on June 23, 2007: “I will sign a universal health care bill into law by the end of my first term as president that will cover every American.” The latest CBO projections last May show that as of the end of 2013, Obamacare will have reduced the number of nonelderly

uninsured by less than 4 percent. This figure excludes 11 million unauthorized immigrants (51 percent of whom are uninsured). Even when Obamacare is fully implemented in 2017, it will cover only 92 percent of the nonelderly population who are not unauthorized immigrants (nearly everyone age 65 and above is already covered by Medicare), and 84.7 percent of that group already had coverage in March 2009, a full year before Obamacare was signed into law. Even if we concede that other countries relying on an individual mandate have failed to drive their uninsured rates below 1 percent (Switzerland) or 1.5 percent (Netherlands), Obamacare will close only 53 percent of the gap that existed when President Obama was sworn into office. **GRADE: F.**

PROMISE #2: NO NEW TAXES ON THE MIDDLE CLASS.

Candidate Obama promised on September 12, 2008: “I can make a firm pledge under my plan, no family making less than \$250,000 a year will see any form of tax increase. Not your income tax, not your payroll tax, not your capital gains taxes, not any of your taxes.” Using official estimates from the Congressional Budget Office and the Joint Committee on Taxation, the House Ways and Means Committee projects that Obamacare will increase federal revenues by \$1.058 trillion between 2013 and 2022. Only 30 percent of this total will be raised from taxes that exclusively target taxpayers earning over \$200,000 (singles) or \$250,000 (married). The remaining 70 percent will be borne by households at all other income levels. Tax Policy Center figures show that such households do not account for more than half of all federal taxes. So even if we generously assume such households will bear a similar share of the myriad levies to be imposed on health insurers, medical device manufacturers, and drug manufacturers—levies which will be passed onto consumers—that still leaves at least 35 percent to be borne by families at or below middle-class incomes.

And these figures do not include the hundreds of billions of dollars in new revenue that will have to be collected by states to pay for their share of Obamacare-induced

Christopher Conover is a research scholar in the Center for Health Policy & Inequalities Research at Duke University, an adjunct scholar at the American Enterprise Institute, and a Mercatus Center-affiliated senior scholar.

growth in Medicaid. Nor do they include the impact of “taxation by regulation”—i.e., the tens of billions of dollars in higher premiums that young Americans are being forced to pay under Obamacare’s modified community rating rules in order to subsidize predominantly higher-income people who happen to be older. In short, President Obama’s promise at best was 65 percent true and more likely 50 percent or less true. **GRADE: F.**

PROMISE #3: ANNUAL PREMIUM SAVINGS OF \$2,500.

Candidate Obama promised on June 5, 2008: “We’ll lower premiums by up to \$2,500 for a typical family per year. . . . We’ll do it by the end of my first term.” This promise was reiterated at least 14 times, most recently in a campaign speech on July 16, 2012. An adviser who helped calculate the original figure is on record as saying that the claim that premiums would decline by \$2,500 per family was a “misstatement”; what was originally intended was that total health spending would decline by this amount. So let us give the president the benefit of the doubt by (a) reframing his promise as a prediction about health spending rather than premiums and (b) allowing Obamacare a full 12 years to achieve the promise instead of taking candidate Obama’s rash claim “by the end of my first term” literally. Even by that relaxed standard, all the available evidence makes this claim provably false. The latest report from the Medicare actuaries shows that in its first dozen years, Obamacare will boost health spending by “roughly \$621 billion”—or an average of \$7,579 for a family of four—above the amount Americans would have spent without this misguided law. When even the fact-checker at the *Washington Post* awards Three Pinocchios to a claim and PolitiFact deems it a Promise Broken, it seems reasonable to label it a failure. **GRADE: F.**

PROMISE #4: BEND THE COST CURVE. On December 15, 2009, after meeting with Senate Democrats, President Obama asserted that the Senate bill (which passed nine days later) “will finally reduce the costs of health care.” While conceding that health spending would go up in the first 10 years as a result of the expansion of coverage, PolitiFact scored this statement as Half True on grounds that the plan would “bend the cost curve” (a term of art championed by former OMB director Peter Orszag and used repeatedly by the president in explaining his goals for the proposed plan). That is, in the final year of the 10-year projection used by the Medicare actuaries to score the plan, the rate of growth in health spending under the Senate bill (essentially the version signed into law) would be slightly lower (6.9 percent) than under the status quo (7.2 percent). Unfortunately, the Medicare actuaries, along with the Medicare trustees,

CBO, and Government Accountability Office, also have questioned whether the deep cuts in Medicare—which are central to any estimated reductions in the long-term rate of health spending growth—are either wise or politically sustainable in light of their potentially devastating effects on access to care (more on that shortly). Under a more realistic “alternative fiscal scenario” (which the independent, nonpartisan Committee for a Responsible Federal Budget argues “is probably a lot closer to where we are going” than the baseline scenario used by CBO), Medicare spending by 2085 will absorb 9.8 percent of GDP rather than only 6.5 percent of GDP under the less realistic current law projection that was used by CBO to conclude that Obamacare would reduce the deficit. Since this was a long-term promise that may yet bear fruit (however improbable that is given what we know), it is fairest to award the **GRADE: INCOMPLETE.**

PROMISE #5: NO INCREASE IN THE DEFICIT. On September 9, 2009, President Obama promised: “I will not sign a plan that adds one dime to our deficits.” While the CBO scored the plan as reducing the deficit in its first 10 years, Rep. Paul Ryan eloquently and decisively revealed the “gimmicks and smoke-and-mirrors” underlying that assessment (which counted 10 years of revenue but only 6 years of spending, for instance). Medicare public trustee Charles Blahous went even further in documenting that some of the conventional assumptions used in CBO’s analysis contravene actual law. A far more accurate assessment using more realistic assumptions was made by former CBO director Douglas Holtz-Eakin and the research analyst Michael Ramlet, who concluded that “the new reform law will raise the deficit by more than \$500 billion during the first 10 years and by nearly \$1.5 trillion in the following decade.” Similarly, using a more realistic fiscal scenario than the one CBO was forced to use to score Obamacare originally, the Government Accountability Office has shown that ACA has put us on a path to add \$6.2 trillion (2011 dollars) to the deficit over the next 75 years. **GRADE: F.**

PROMISE #6: YOU CAN KEEP YOUR PLAN IF YOU LIKE IT. On June 15, 2009, President Obama promised: “If you like your health care plan, you’ll be able to keep your health care plan, period. No one will take it away, no matter what.” This promise in various forms was made three dozen times. As of December 11, 2013, some 6 million Americans had lost their coverage as a result of the cancellation of nongroup policies that did not meet Obamacare coverage standards. The RAND Corporation projects that of 17.7 million who would have had nongroup coverage in 2016 absent Obamacare, only 0.2 million will retain that coverage. Likewise,

but for the one-year delay of the employer mandate, many would have seen their employer-based plans canceled. Estimates of how many will lose their employer-based coverage because their employer drops it are all over the map, ranging from 11 million (CBO), to 14 million (Medicare actuary), to 17.2 million (Lewin Group), to as high as 35 million (American Action Forum).

And because Obamacare will slash payments to Medicare Advantage plans, the Medicare actuary has calculated that once these cutbacks are fully phased in by 2017, about half of Medicare Advantage plan members (7.4 million) will lose their Part C coverage and be forced back into the wasteful and inefficient Medicare fee-for-service system. Regrettably, a disproportionate number of those losing Medicare Advantage plans are low-income seniors who had discovered it was much less expensive to join a Part C plan than pay premiums for regular Medicare coverage. In short, leaving aside the tens of millions who will pay higher premiums for “enhanced” coverage they may not want or need, the number who see their plans canceled whether they like them or not can also be measured in tens of millions. There is no need to calculate the exact number to arrive at a grade since PolitiFact declared this promise the Lie of the Year for 2013. **GRADE: F.**

PROMISE #7: IF YOU LIKE YOUR DOCTOR, YOU CAN KEEP YOUR DOCTOR. On June 15, 2009, President Obama promised: “If you like your doctor, you will be able to keep your doctor, period.” As the *Washington Post* recently reported, “Many small businesses are also discovering that the new plans have more restrictions on access to specific doctors, hospitals and prescription drugs.” Because the law requires those in the individual and small group markets to purchase coverage that is more comprehensive than some buy today, the principal remaining strategy for holding down premium increases is to narrow the provider networks offered. It is difficult to say how many of the nearly 6 million who have lost their nongroup coverage have been unable to find a plan that lets them keep their doctor. The same can be said of the tens of millions who may eventually lose their employer-based coverage and the 7.4 million affected by the Medicare Part C cutbacks. Worth noting is that as of mid-January, 4.5 million have signed up for Medicaid (and CBO projects that when fully implemented in 2015, Medicaid will cover a total of 12 million newly eligible). But RAND simulations indicate that 27 percent of newly Medicaid-eligible people will be individuals losing employer-based coverage, and another 5 percent will have given up nongroup coverage. Since one third of doctors are currently unwilling to see new Medicaid patients, at least some unknown fraction of newly Medicaid-eligible people will lose their doctors. **GRADE: F.**

PROMISE #8: I'M NOT GOING TO TOUCH MEDICARE. On July 29, 2009, the president asserted at a town hall meeting: “Medicare is a government program. But don’t worry: I’m not going to touch it.” Yet when the chief actuary for Medicare scored the law less than a month after its passage, he found that it would cut Medicare by \$575 billion in its first 10 years. In four consecutive annual reports, the Medicare actuary reported that if these steep cuts in provider payment rates were actually implemented, 15 percent of hospitals, skilled nursing facilities, and home health agencies would be operating in the red by 2019. Likewise, Obamacare eventually would drive Medicare payment rates to physicians to less than half the levels paid by Medicaid, which most experts agree would push providers to abandon Medicare in droves. Even though Medicare Advantage plans are 9 percent less expensive when fairly compared with regular fee-for-service Medicare, Obamacare will also slash payments to such plans by \$145 billion in its first 10 years. The Medicare actuary projects these cutbacks will result in a 50 percent reduction in Medicare Advantage plan membership by 2017. **GRADE: F.**

MIDTERM GRADE, PROMISES VS. PERFORMANCE: F. This student has a persistent tendency to make outlandish promises that too often have turned out to be the opposite of what the student predicted. Not one of these promises was inherently implausible when uttered, but the prospect of achieving even one of them by the final grading period seems vanishingly remote. This student would do well to consider abandoning this project in favor of starting over with a new approach.

SECOND GRADING STANDARD: PEER COMPARISONS

In medical care, researchers often resort to process measures because they typically are easier to measure and tend to be available on a more timely basis. Instead of comparing reality (or projected reality) with the student’s own promises, in this section we can compare presidential performance against that of the peers who preceded him in office.

PEER COMPARISON #1: TRANSPARENCY. In a January 31, 2008, campaign debate, candidate Obama promised: “That’s what I will do in bringing all parties together, not negotiating behind closed doors, but bringing all parties together, and broadcasting those negotiations on C-SPAN so that the American people can see what the choices are.” In a detailed examination of this issue, McClatchy Newspapers showed that substantial negotiations on health reform

were held behind closed doors. These include separate agreements with the drug industry and hospitals over how to reduce costs in the next decade. In Congress, too, most negotiations took place behind closed doors, as is standard practice. The most difficult negotiations take place in private, before bills come to committee or the House or Senate floor. For better or worse, most experienced observers have concluded the Obamacare process was far more open than that used to create Hillarycare, which entailed a 500-person task force that worked entirely behind closed doors. One could argue that the president had no control over the process once he delegated the task of writing the bill to Congress. Nevertheless, PolitiFact scores this as a promise broken.

Moreover, something the president did have control over was a related pledge to post online for five days all nonemergency bills before he signed them, allowing the public to comment on pending legislation. This promise was broken at least 10 times during his first three months in office; so it was not surprising to see it broken again in the case of Obamacare (which passed the House on March 21, 2010, and was signed into law on March 23, without having been posted for even a minute on the White House website). In light of all the “drafting errors” later discovered (some of which have triggered lawsuits that may yet unravel components of the law), failure to follow through on this simple promise was inadvisable from a policy perspective, even though it arguably eased the politics for the president and his party. Similarly, the president and his advisers were far less than forthcoming with members of Congress as they sought to discharge their monitoring and oversight responsibilities. More timely and accurate information about the progress of implementation might have permitted Congress to take actions to avert the inexcusably poor rollout of the Obamacare exchanges.

GRADE: D.

PEER COMPARISON #2: LEGITIMACY OF THE STATUTORY PROCESS. In October 2007, candidate Obama solemnly promised: “We are not going to pass universal health care with a 50-plus-one strategy.” Instead, he pledged to bring the nation together by forming huge congressional majorities to support his policies. Although he had less than three years of Washington experience at that juncture, candidate Obama’s intuition was on the money. No major piece of domestic policy legislation had ever in U.S. history been enacted on a pure party-line vote. A majority of Republicans in the House voted for Medicare, and Senate Republicans were nearly evenly divided when that law passed in 1965. Likewise, in 1935, House Republicans voted more than 5 to 1 in favor of Social Security, and Senate Republicans voted more than 3 to 1 in favor. Note that in both cases, the Democrats held far more commanding

majorities in both chambers than in 2010. Thus, in principle, Presidents Roosevelt and Johnson might well have elected to drive through a version of their plans more to their liking on a purely partisan vote but recognized the foolishness of such a divisive strategy.

Although he could not foresee it in 2007, a critical difference between Obama’s health initiative and these other major pieces of legislation was the lack of public support for the former. Medicare, for example, persistently had majority public support, and Social Security has enjoyed high public support since its inception. Even the Clinton health plan began with pretty solid public support; within six months, however, there was majority opposition to the plan that persisted until its demise in the fall of 1994.

In sharp contrast, Obamacare has faced years of steadfast public opposition. Of 140 polls tracked by *Real Clear Politics* between April 2009 and the bill’s passage, less than a year later, supporters of the plan outnumbered opponents in only 16 polls (11.4 percent). With the exception of 3 polls that were tied, the remaining 121 saw opponents outweighing supporters by as many as 25 percentage points. This was by no means preordained: Between late April 2009 and late June, polls showed majority support by as much as 9 points. But the more people learned about the plan in the summer of 2009, the more their opposition grew.

Democrats like Nancy Pelosi expressed confidence that things would turn around, but this never happened. *Real Clear Politics* has tracked 298 polls since Obamacare’s passage. Only 10 (3.3 percent) show supporters outnumbering opponents. Once again, leaving aside 2 polls that were tied, the rest show margins of opposition typically in double-digits and up to 31 percentage points. *Real Clear Politics* has separately tracked polls focused on repeal of the health care law, and these show an even stronger pattern of opposition. Of 145 polls tracked since March 2010, exactly 1 showed opponents of repeal outnumbering proponents. Most showed advocates of repeal leading by double-digits, once by 29 percentage points.

In light of these numbers, President Obama’s decision to go for broke in early 2010—despite having lost his filibuster-proof Senate majority with the election of Scott Brown—was bold, not to say rash. His chief of staff, Rahm Emanuel, a veteran of the Clinton health debacle, had strongly counseled finding a more modest bipartisan compromise. But at the end of the day, Obama should get credit for having made the call (recognizing that it would have been worthless without Pelosi’s skillful execution).

President Obama assuredly won the battle. It remains to be seen, however, whether he wins the war. Ramming Obamacare through on a party-line vote has had some predictable adverse consequences.

■ First, at least part of the persistent public opposition to the law stems from the (arguably accurate) perception that the administration rode roughshod over public opinion rather than accommodate it.

■ Second, the law has met with active opposition from governors and/or state legislatures across the country. As of mid-December 2013, only 26 states (including the District of Columbia) were “moving forward” on Medicaid expansion even though the federal government is on the hook to bankroll the lion’s share of it. Likewise, only 17 states elected to create state health exchanges, while another 7 states agreed to partner with the federal government in creating exchanges, leaving 27 states that let the federal government set up and run the exchange on its own. This unexpected responsibility may have contributed to the botched rollout of the federal exchanges. States also have played an instrumental role in mounting legal and constitutional challenges to the law.

■ Third, Republican opposition in Congress has been unrelenting. As of mid-2013, House Republicans had voted 37 times to repeal all (6 votes) or parts of the law. Some of the partial repeal efforts have been signed into law, including the elimination of the CLASS Act originally intended to finance long-term care, cutting off funding for nonprofit health plans (CO-OPs) to be established in every state, and elimination of onerous Form 1099 reporting requirements. Most Republican members of Congress are firmly committed either to the law’s repeal or to delay of significant provisions until Republicans attain majorities in both the House and Senate, a turn of events that would permit a systematic dismantling of the law’s worst features.

■ Fourth, as health law expert Tom Miller observed, “The ACA was so haphazardly and inconsistently cobbled together in last-minute scrambles behind closed doors in Congress to pass something ‘by any means necessary’ in late 2009 and early 2010 that any straightforward interpretation of its meaning today remains elusive.” The confusion left in the wake of this irregular process is at the heart of several pending legal challenges to the law that may yet significantly undermine its successful implementation.

It is unlikely this level of opposition would have persisted this long had the law enjoyed widespread support among the public. It remains to be seen whether the political damage caused by the decision to pass Obamacare on a party-line vote will fade or could cause the law to unravel entirely. **GRADE: D.**

PEER COMPARISON #3: LEGITIMACY OF THE IMPLEMENTATION PROCESS. From the beginning, the administration appears to have adopted a lax approach to implementation. In some cases, this took the form of using regulations or not-so-subtle coercion to implement provisions never

written into the law, while in others, it meant selectively enforcing the law as written, issuing waivers or delays without statutory authorization. And in cases where it had explicit statutory authority, the administration routinely used it to reward politically favored groups.

For example, the law was intended to prevent insurers from excluding children with preexisting conditions effective in 2010. But because of an alleged drafting error, the statute made this provision applicable in January 2014 (when it applied to adults as well). Within days of the law’s signing, Health and Human Services secretary Kathleen Sebelius began jawboning insurers to comply with her interpretation of Congress’s intent rather than the law itself. HHS subsequently issued a rule on June 28, 2010, that beginning on September 23, 2010, group health plans could not exclude enrollees (employees, spouses, or dependents) under age 19 because of preexisting conditions. Such lawless action was not without consequences. Even though the insurance industry was too meek to challenge the secretary in court, a 2011 survey showed that Obamacare had prompted at least one health insurance carrier in each of 39 states to abandon the child-only market, including 17 states in which no carriers were willing to sell new child-only health plans.

More than half a dozen different types of waivers have been issued, some provided for in the law (“medical loss ratio” waivers for states, state innovation waivers, and individual mandate waivers), others invented on the fly in response to political pressure (contraception waivers, MLR waivers for mini-med plans, annual limit waivers for mini-med plans, a two-year waiver to Massachusetts to end-run certain insurance rules). Despite Obamacare’s extraordinary grant of authority to Secretary Sebelius—the law contains more than 2,500 references to the secretary of HHS, including 700 statements that the secretary “shall” do something, more than 200 that she “may” take regulatory action, and 139 passages where the law mentions decisions that the “Secretary determines”—she unilaterally extended that authority. Secretary Sebelius ultimately granted thousands of mini-med waivers affecting roughly 4 million individuals; 58 percent of those benefiting from these waivers were labor union members, a pattern of favoritism towards political allies that was amplified in the distribution of \$5 billion in taxpayer funds under the Early Retiree Reinsurance Program (where public employee union plans accounted for 47 percent of plans given assistance, while private unions accounted for another 10 percent).

Unilateral administrative decisions to (a) postpone the employer mandate one year, (b) postpone out-of-pocket spending limitations one year, (c) allow continuation of already-canceled plans one year, (d) permanently

give Congress favored treatment on the exchanges, and (e) permit payment of subsidies on federally run exchanges, violating the letter of the law, all are of dubious constitutionality. Likewise, the U.S. Office of Special Counsel ruled that in early 2012 Sebelius violated the Hatch Act (which prohibits executive branch personnel from engaging in partisan political activity); Hatch Act violations normally require the employee to be terminated, yet the violation was dismissed by the administration as an “inadvertent error.” In May 2013, Sebelius brazenly solicited contributions from the insurance industry even though federal law prohibits department officials from fundraising in their professional capacity. Leaving aside the roughly 100 lawsuits that have challenged provisions of the law itself, these lawless implementing actions have triggered a steady stream of legal challenges that may yet cripple the law’s operation. **GRADE: D-.**

PEER COMPARISON #4: QUALITY OF RULE-WRITING. A Mercatus study of the first eight major rules issued under Obamacare revealed that in the rush to implement key regulations, agencies sped through the process of regulatory analysis. When compared with regulatory analysis for economically significant regulations in previous years, that accompanying the ACA rules was of lower quality and produced poorly substantiated claims about the law’s benefits and costs. That is, the analysis was even worse than is typical for rules of this scope. **GRADE: C-.**

MIDTERM GRADE, PEER COMPARISONS: D. This administration has been far less transparent than it should have been, especially for the president’s signature domestic initiative. It used a process of questionable legitimacy to enact the law and followed up with an implementation process that too often skirted legal and constitutional constraints. Even if the implementation had remained within legal bounds, the administration’s rule-writing was below-par.

THIRD GRADING STANDARD: OUTCOMES

OUTCOME #1: UNINSURED RISK. As I have noted in *Forbes*, it remains to be seen how many people ultimately gain coverage under Obamacare. The great uncertainty about the actual numbers underscores how poorly the enrollment process has been managed. As of mid-January 2014, anywhere from 4.6 to 6.4 million people had been enrolled in Medicaid. But this grossly overstates the effect of Obamacare since in the handful of states that keep separate statistics, redeterminations account for 32 to 48 percent of the total enrolled since October 1. As

well, Medicaid was constantly enrolling new people before Obamacare. Once these “routine” enrollments and redeterminations are taken into account, the net increase in Medicaid enrollment attributable to Obamacare is only 190,000 to 380,000. But even that doesn’t tell the whole story since actuarial models suggest that only 63 percent to 72 percent of the newly Medicaid-enrolled were previously uninsured, meaning that Medicaid expansion has only covered 120,000 to 274,000 previously uninsured people in its first 100 days.

On the exchanges, the story is similarly dismal. As of January 21, 3.5 million had enrolled on the exchanges. However, only 11 to 35 percent of these were previously uninsured, that is, 385,000 to 1.2 million people. Finally, between 2.2 and 2.6 million young adults have gained coverage on their parents’ health insurance. Thus, all told, Obamacare likely has covered at least 2.7 million uninsured and perhaps as many as 4.1 million. However, nearly 6 million nongroup plans have been canceled. Even if we generously assume that 1 million of those dropped were able to keep their plan after all because of the president’s plea to allow canceled policies to remain in force for another year, the chances appear far better than even that Obamacare has not reduced the total number of uninsured as of early 2014. **GRADE: F.**

OUTCOME #2: HEALTH SPENDING. Through 2013, Obamacare added only \$32 per capita to national health spending. Of course, serious expansion of coverage did not begin until January 1, 2014; consequently, this figure will escalate—according to Medicare actuaries, it will rise 100-fold, to more than \$3,500 per person over the next four years. Nevertheless, for purposes of grading, the increase to date (like the benefits to date) has been rather small.

The story on private health insurance premiums is far less benign. Milliman Inc. in a study commissioned by the Society of Actuaries (SOA) calculated that premiums in the individual market nationwide would increase from 8 to 37 percent in 2014. So while some individuals may face lower premiums on the exchanges (e.g., near-elderly females), this is an estimate of the overall average increase in premiums for the roughly 14.6 million Americans with nongroup coverage in 2013 (excluding those with Medicare supplements). In addition, the SOA estimates that nearly half of exchange members will be drawn from those who previously had employer-based coverage. Even after accounting for subsidies available on the exchanges, *National Journal* estimates that 66 percent of workers with single coverage and 57 percent of workers with family coverage will face higher premiums on the exchanges than they would pay for employer-sponsored coverage. For those who remain in the group market, premium increases

will be somewhat smaller. The consulting firm Aon Hewitt conducted a survey of 26 health plans covering 32 million individuals, on the basis of which it estimated that in 2011 Obamacare-required changes in coverage (e.g., free preventive services) increased premiums by an average of 1.5 percent in the small group market and 0.8 percent in the large group market. When averaged across the entire population with private coverage, the annual premium increase attributable to Obamacare to date would be less than 1.5 percent. This is certainly worse than the premium *savings* predicted by the president, but likely much better than many feared. **GRADE: B-.**

OUTCOME #3: QUALITY. While Obamacare has launched a series of changes designed to improve quality (e.g., Medicare penalties for hospital readmissions), actual data on quality improvements are not yet available. Moreover, any such improvements may be counterbalanced by the deep cuts in Medicare payments to hospitals. This is worrisome since one study of previous Medicare cutbacks to hospitals found that for every \$1,000 reduction in hospital reimbursements, there was a 6-8 percent increase in hospital mortality rates. Put a different way, each 1 percent reduction in hospital reimbursements was associated with a 0.3 percent increase in mortality rates. In addition, taxes on medical device manufacturers and pharmaceutical companies may well lower the sums spent on R&D in these industries, resulting in avoidable deaths due to the suppression of innovations that might otherwise have been produced by this research. **GRADE: INCOMPLETE.**

OUTCOME #4: EMPLOYMENT. When both direct and indirect effects are taken into account, Obamacare eventually is expected to reduce the number of full-time-equivalent workers by 2.5 million, according to the CBO report released last week. And once the employer mandate takes effect, it is expected that the law will result in an additional 10 million workers transitioning from full-time to part-time. Nevertheless, because the employer mandate was delayed until 2015, most of these adverse consequences are in the future. To date, nearly 400 employers have cut back on employee hours to keep them below the 30-hour-per-week threshold that would trigger the Obamacare employer mandate. But in an economy with 145 million workers, such actions are too small to register in aggregate employment statistics. Although there were some disturbing signs in various employment indicators of a shift towards part-time employment in the first half of 2013, these patterns reversed themselves after the delay of the employer mandate was announced in early July. Most experts agree that current employment statistics do not (yet) show a shift towards part-time employment. Thus, the biggest

measurable adverse employment impact that has resulted from Obamacare comes from a synthesis of Obamacare regulations showing that to date they impose an annual burden of 127 million hours (equivalent to 63,000 full-time workers). **GRADE: C.**

OUTCOME #5: FEDERAL BUDGET DEFICIT. Similarly, the adverse impact of Obamacare on the federal budget deficit is in the future. Because revenues were front-loaded and spending back-loaded, Obamacare had no adverse effect on the federal budget deficit through 2013. When all federal tax revenues are taken into account, Obamacare raised \$58.3 billion in its first four years. Because much of the additional spending was exactly matched by spending reductions elsewhere (predominantly Medicare), the net effect was to reduce the federal budget deficit by \$45 billion over this period. Thus, although its financing arguably is far more convoluted and less transparent than it should be, the law in its early years at least was honestly financed. Thus, the net cost to taxpayers was \$13.3 billion or \$43 per capita. **GRADE: A.**

MIDTERM GRADE, OUTCOMES: C+. Even though expanded coverage was its central purpose, Obamacare has failed to achieve it so far—a performance that may improve in the future. Conversely, Obamacare gets much better midterm marks for its modest impact on health spending and employment and high marks for its short-term effects on the federal budget deficit. Unfortunately, all signs point to worsening performance on each of these dimensions over the next five years.

NET ASSESSMENT AND OUTLOOK

Here's the bottom line: Obamacare has failed miserably on nearly every major promise made about it (Grade: F). The processes used to enact and implement the law have been tarnished by actions of questionable legality and a pervasive lack of transparency (Grade: D). On actual outcomes, Obamacare has fared better in the short term (Grade: C+), but there are worrisome signs that by most measures, the law's performance will get significantly worse by the time final grades are handed out.

I'll admit, I'm a pretty tough grader. In this era of grade inflation, some Americans may be inclined to be more generous. But after doing this for nearly four decades, I think I'm a fairly good judge of health policy work and its likelihood of success when put into practice. We're only at midterm, but I'd have to say the long-term outlook for Obamacare is very poor indeed. ♦

God Help Us

*Marianne Williamson's campaign to save America's soul,
starting with California's 33rd Congressional District*

BY ZACK MUNSON

Los Angeles

In case you were wondering, things in California just got a little weird. Okay, maybe not “just.” Let me be more specific: The congressional election in California’s 33rd District, a coastal tract encompassing some of the wealthiest, most liberal quarters of Los Angeles County—Bel Air, Santa Monica, and Beverly Hills, to name a few—just got a little weird. On January 30, Henry Waxman, the district’s long-serving and notoriously cantankerous representative, surprised everyone by announcing he would retire at the end of this term. Since arriving in Congress in 1975, Waxman has been a dogged champion of progressive causes and a frequent irritant to Republican administrations. During George W. Bush’s term alone, Waxman, from his perch on the House Committee on Oversight and Government Reform, launched investigations into everything from the handling of Hurricane Katrina to government contractors in Iraq to Republican National Committee email ethics. Generally speaking, he has been a pain in the collective GOP hindquarters for nearly 40 years.

But with Waxman bowing out, how will things change? A television producer named Brent Roske has declared his candidacy, but it’s purely symbolic, and he’s not actually campaigning. Sandra Fluke, the Georgetown law student who made a name for herself by complaining that the Jesuit school’s health plan didn’t cover birth control, floated her name as a possible candidate and then decided against it. There is a possibility that conservative Bill Bloomfield, who gave Waxman a run for his money in 2012, will give it another shot, but he has yet to announce (Waxman beat him 54-46 in a district Obama carried 61-37). The field remains wide open. In fact, at the moment, there is only one candidate running anything approaching a real campaign. Well, maybe “campaign” is the wrong word. It’s more a vision quest. If you live in Waxman’s district, Marianne Williamson doesn’t just want to represent you. She wants to save your soul.

Though perhaps not a household name, Williamson is

something of a celebrity: Her self-help books have earned her national recognition, and her weekly lectures on spirituality have made her a fixture in Los Angeles for over 30 years. Back in October, having at long last grown tired of politics as usual, frustrated with the Democratic party of which she has been a member all her life, and armed with a large grassroots following (she claims more than 400,000 Facebook fans and 200,000 Twitter followers), she announced her independent candidacy for Waxman’s seat and has been kissing proverbial babies ever since.

New Age spiritual teacher, guru to movie stars, friend of Oprah—she is both self-actualized and self-made. Born to a Jewish family in Houston in 1952, by the late 1970s, Williamson confesses, “I was a total mess.” After bouncing “from relationship to relationship, job to job, city to city, looking for some sense of identity or purpose,” she found herself living in New York, “seeking relief in food, drugs, people, or whatever else I could find to distract myself.”

She wallowed in this depression until stumbling across a book that she credits with transforming her life. That book was *A Course in Miracles*, a 1,300-page spiritual manual (complete with student workbooks and instructions on how to teach it) written by New York psychologists Helen Shucman and William Thetford and published by the Foundation for ParaSensory Investigation (now the Foundation for Inner Peace). Williamson heeded the book’s call to become a “miracle-worker.” In 1983, now living in Los Angeles, she began lecturing on *The Course* (as she calls it) at the Philosophical Research Society in Los Feliz. She developed a large following, particularly among Los Angeles’s gay community, which was then being ravaged by the initial outbreak of AIDS. By the end of the ’80s, she had helped to found the Los Angeles Center for Living and Project Angel Food, both nonprofits providing assistance to people suffering from HIV, AIDS, and other life-threatening illnesses. A few years later, she had to resign the leadership of Project Angel Food after a controversy erupted when she fired several employees for their attempts to unionize. In response to numerous media reports of her explosive temper and overbearing management style, Williamson, ever ready to embrace her own weaknesses, nicknamed herself “The Bitch for God.”

In 1992, she wrote a self-help manual, *A Return to Love*,

Zack Munson is a writer in Los Angeles.

expounding on excerpts from *The Course. A Return to Love's* overall spiritual lesson is that we as human beings are in fact all one being, not under but *with* God, that all of our minds are actually one mind, and that we have tricked ourselves into thinking we are separate from one another, thus creating fear, which dominates us and throws us into collision with everyone else, who, we need to remember, are really also us. According to Williamson, there is only one way out of this destructive cycle, and that is (spoiler alert) a return to love.

Both her book and *The Course* make liberal use of Christian theological terms, but deploy them as merely symbolic of universal spiritual truths. “The concept of a divine, or ‘Christ’ mind,” we learn, “is the idea that at our core, we are not just identical, but actually the same being.” Christ, you see, “is a psychological term” and “‘Accepting the Christ’ is merely a shift in self-perception. We awaken from the dream [that] we are finite, isolated creatures, and recognize that we are glorious, infinitely creative spirits.” And, not to leave anyone out, Williamson’s book also includes a smattering of references to other religious and cultural traditions:

In Taoist philosophy, “yin” is the feminine principle, representing the forces of earth, while “yang” is the masculine principle, representing spirit. . . . In Christic philosophical terms, Mary symbolizes the feminine within us, which is impregnated by God. . . . Through a mystical connection between the human and divine, we give birth to our Higher self.

And so on. And so forth.

Despite its mealy-mouthed pan-denominationalism, Williamson’s counsel is not, as these things go, all that bad: We should try to think of others more than ourselves; we should try to treat people with kindness; we should try to replace our selfish and fearful thinking with love. It is all just fuzzy enough about specific directives to appeal to spiritually minded folks who might be turned off by having to do anything, besides think happy thoughts, to achieve enlightenment. Perhaps as a result, the book spent 39 weeks on the *New York Times* self-help bestseller list and brought Williamson national attention (not to mention a lot of money).

In the intervening years, she has published nine more books (five more bestsellers), including, in 2000, *Healing the Soul of America: Reclaiming Our Voices as Spiritual Citizens*. The book is really a political manifesto, glorifying the protest politics of the 1960s and lamenting, “The invisible order that shot our heroes [i.e., JFK, RFK, and MLK Jr.] did not keep shooting, but began providing goods and services as quickly as possible to distract a grieving generation from our

psychic pain.” The result of this materialist conspiracy, Williamson feels, has been a disengagement from politics, and *Healing* offers a broad indictment of the American voting public’s apathy and ignorance. “Today’s average American is more apt to rebel against a tennis shoe not coming in the right color than against the slow erosion of our democratic freedoms,” she declares. “Today, most Americans are too cynical, or tired, or both, to even approximate our Founders’ courageous repudiation of injustice.” The overarching message is that we need to slough off our materialistic chains and apply our great spiritual wisdom, above all our innate love for one another as human beings, to the political problems of the day. All we need, in other words, is love.



Williamson, right, at a campaign stop

On my way to meet Williamson at a restaurant in Brentwood, I’m not quite sure what to expect. I’ve never seen a guru before, let alone had lunch with one, and my East Coast prejudices are already starting to get the better of me. I’m half-expecting her to glide into the dining room in flowing saffron robes and to answer my questions in New Age hypnobabble. To be honest, I’m kind of hoping for it. But I find her sitting at a corner table dressed neatly in a black pantsuit, mundanely sipping a cup of coffee.

Clearly, Williamson is not your straight-from-central-casting hippie-dippy-California spiritual type. She is tall, brunette, beautiful, and quite squarely put together: sharp features, a strong chin, a firm handshake. Her bearing is businesslike and utterly without pretension. The spiritual life has clearly been good to her. She speaks confidently, rapidly. She is relentlessly on message, and her message is simultaneously aggressive and unifying. “I think there’s a basic disintegration in our democratic foundation which is not being addressed by either major political party,” Williamson tells me. “Part of the problem I have with the status quo is that they only speak to the selfish interest of the American people, and I believe the American people are better than that.”

Her primary concern is that “Americans are feeling locked out of the system.” When I gently point out that the 33rd District, locus of countless Obama fundraisers and home to some of L.A.’s richest, most famous, most beautiful souls, ranks fairly low on any scale of locked-outness, she immediately agrees. “This is definitely one of the least locked-out districts.” That being said, “We are more than economic creatures. We have a soul.” She continues, benevolently, “I am not speaking to the rich in you, or the poor in you. I am speaking to the American in you.”

“Don’t get me wrong,” she says with a smile, “capitalism

has been good to me. But what is happening today is that too many people can't get in the club, there has to be enough access. There has to be enough access to opportunity for America to be a stable democracy." All in all, she exudes an aura of moderation, and her frequent references to America's most popular political icons only add to it. "The Constitution doesn't mention political parties; Washington warned us against them," she declares. "JFK said, 'Let us not seek a Republican answer or a Democratic answer. Let us seek an American answer.'"

What, then, is the American answer that Marianne Williamson seeks? Well, despite the promise of her campaign's slogan to "Create Anew," it is pretty much warmed-over, social-justice, progressive, liberal blah blah blah, with a little California crunchy-wackadooism thrown in. Prison reform, climate change, shutting down nuclear power plants, and ending the "corruption of the food supply" are high on her list of priorities. Above all else, she is intent on getting the money out of politics and views *Citizens United*, the 2010 Supreme Court decision easing restrictions on campaign contributions, as perhaps the greatest threat to democracy that America has ever faced. But even while condemning both political parties and the state of our democratic system in general, while complaining about incarceration rates and Monsanto and "moneyed interests," she somehow still sounds quite reasonable, lacking the stridency of MSNBC and the outright incoherence of the now-defunct Occupy movement (RIP). After just a few minutes, I can't deny that Williamson is a knockout of a candidate: smart, eloquent, passionate, and considerably more telegenic than her, um, rodentine predecessor.

As our conversation winds down, she suggests I check out her weekly spiritual lecture, you know, "so you can see me in front of an audience." I am happy to oblige, and when I show up at the Saban Theatre in Beverly Hills on a Monday night, taking my seat in the back among a crowd of several hundred spiritual seekers, I am not disappointed. Williamson writes in *A Return to Love* that "the spiritualization process . . . is the cultivation of personal magnetism," and if she were any more magnetic, people's fillings would be flying out of their teeth. As spirit guide, she is softer than in her candidate persona, but she talks just as quickly and fluidly and with as much conviction. "May we be lifted above and beyond to the endless love and peace that is beyond," she prays from the stage, concluding, after a dramatic moment of silence, "And so it is."

She talks for about an hour to the rapt crowd about a passage from *The Course* dealing with the idea that "I am as God created me." Her talk is quite soothing, and she implores us to "discover within your mind the self that is the son of God." She reminds us that we "are perfect and changeless, and so is everyone else," that "the universe is invested in

your self-actualization," and that our "function is to be the light of the world." The overall effect is pleasantly soporific, and by the end of the lecture I get why everyone here loves her so much. I mean, I feel fantastic; I had completely forgotten how perfect I was. After the closing prayer, after we "gently pour ourselves back into the awareness of the human body," she gives us another "And so it is." This time the audience calls back in unison, "And so it is. Amen," which, I'm not going to lie, is pretty odd.

In fact, it's almost as odd as some of her supporters. At the campaign's weekly volunteer meeting, held at The Source Spiritual Center in Venice every Thursday, the first person I encounter, among the crowd of about 50 volunteers, is Steve. A self-described fiscal conservative and social liberal, Steve is the founder of GRIP—Get Rid of Incumbent Politicians—an organization with the modest goal of removing every single incumbent in America from office. Steve starts to tell me how he got involved with the Williamson campaign ("Have you heard of *Dirty Wars*?"), but our conversation is interrupted when an airy woman with flowing blonde hair grabs a microphone on stage and starts welcoming us to The Source. "Let's just take a moment of silence and sit in gratitude for a moment and take a couple of breaths together just to get present in this moment. This is all we're ever in, this is all we have, and that's where all power lies." She closes her eyes, inhales deeply, exhales, inhales deeply again, and exhales before inviting us to check out "the amazing soundbath The Source has on Saturdays," with a promise that afterwards we can go to the "café and elixir lounge" downstairs, if we like.

She hands the mike over to Rob Nelson, Williamson's campaign coordinator. Wild-eyed and meticulously unkempt, Nelson paces the stage back and forth like an uncomfortable comedian, the front of his sweater inexplicably tucked into his boxer shorts, which stick out of the top of his designer jeans. He and the campaign's political coordinator, a nebbishy young fellow named Ben Eisenberg, go through a simple training session on how to register people to vote, and they dutifully deal with the volunteers' innocence about the process. One supporter, for example, is horrified to discover that some of the people they register might vote for Waxman (he was still in the race at the time). Another asks if she has to stay in her own neighborhood, or if she can register voters in other parts of the district, to which Eisenberg responds, somewhat wearily, "If you live in Santa Monica, but you want to register voters at a farmer's market in Malibu, that's totally okay."

There's a brief pause in the action before everyone breaks into smaller groups to discuss canvassing specific locations, and I flinch when a pair of large hands suddenly begins massaging my shoulders from behind and a face pops into my peripheral vision. "Oh! I didn't mean to startle

you!” my new friend, an African-American man wearing a UCLA cap, says with a smile. “How’s the universe treating you?” I let him know it’s treating me just fine and ask how it’s treating him. “Oh, just living in the attitude of gratitude! So are you ready to create anew and achieve the dream?”

This is Tony. He’s been a follower of Marianne for a while, and when he heard she was running for Congress he signed right up to help. In fact, he even wrote a “musical poem” for her campaign. Based on the ’90s hip-hop song “I Got 5 on It,” the poem combines the Williamson campaign slogan “Create Anew” with the generally great life slogan “Achieve the Dream.” According to Tony, he got the idea from Gandhi’s grandson, whom he recently met on a trip to India. When I tell him I’m a reporter writing a story on Marianne, he asks excitedly if I think “America is ready for amazing grace on *seis tres*,” referring in Spanish (for obvious poetic reasons) to June 3, the date of California’s open primary, when the voters will decide which two candidates get to face off in the general election. When I tell Tony I’m not sure, he shakes my hand with a smile, tells me it was great to meet me, and vanishes almost as abruptly as he appeared.

A few days later I find myself in another bustling crowd, this time at the Santa Monica Bay Woman’s Club, where we are assembled for the Williamson campaign’s first monthly issues forum. Tonight’s topic is the all-important “Getting Money Out of Politics,” and Marianne has brought in special guest Adam Winkler, a UCLA law professor, to give a talk. As I enter the hall, I run into Whitney and Caroline, a pair of sixtysomething students of *The Course*. Even though they live just outside the 33rd District, they’re big supporters and plan on urging all their friends in the district to vote for Marianne. “She is a self-actualized person,” Whitney tells me, “Which is a good thing to bring to a body of people like Congress.” Caroline, the more talkative of the two, is more forceful in her endorsement. “It’s like Marianne says, it’s either love or fear. Do you remember what Eisenhower said?” I assure her I don’t. “Beware the military-industrial complex,” she says with a stern face, before adding, casually, “I believe in the Illuminati and all that.”

The room is packed by the time our guest speaker is introduced. Winkler, for his part, gives about as interesting and humorous a talk on the legal history of campaign finance reform as one could expect. Then Marianne joins him on stage, and the floor is opened for questions. “Waxman, while he has been good, has shown a penchant for the military-industrial complex,” the first questioner begins. “Why is impeachment of the Supreme Court not viable?”

asks another. “How can we stop Grover Norquist?” “Is there a shadow government?” “Would you support efforts to eliminate all nuclear weapons from the face of the earth?”

Williamson handles these questions with aplomb, working the crowd, delivering lines that frequently elicit applause. Perhaps not surprisingly, she is less conciliatory here than in her sit-down with me. These are her people, and she is serving them red meat. Or whatever the vegan equivalent of red meat is. “Waxman says fracking is bad, but he won’t do anything about it. How many more studies do we need to realize we are raping our planet?” she asks, to much applause. She announces, to more applause still, that she supports a bill creating a Department of Peace and making its secretary a cabinet-level position. “The phrase ‘shadow government’ doesn’t feel helpful to me,” she says at one point. “It sounds like something over there that we can’t do anything about.

They’re doing it in the light of day!” The crowd erupts. “We repudiated aristocracy in 1776. It is time for us to repudiate it again!” she shouts, to the loudest cheers of the night.

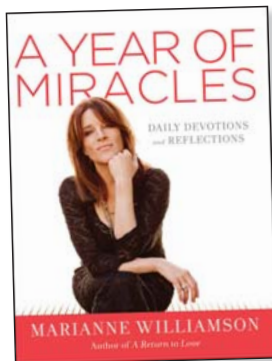
Throughout all this, she still manages to talk about America’s founding principles and the greatness of the American experiment, about the urgency of reengaging with the democratic process, at one point even referring to Tocqueville, all while making the case for her candidacy. “The House of Representatives is the people’s house—the artist, the philosopher, the shoemaker should all serve terms,” she says. “I think my election to Congress

would be the best thing to happen to the Democratic party—it would make them get their soul back.”

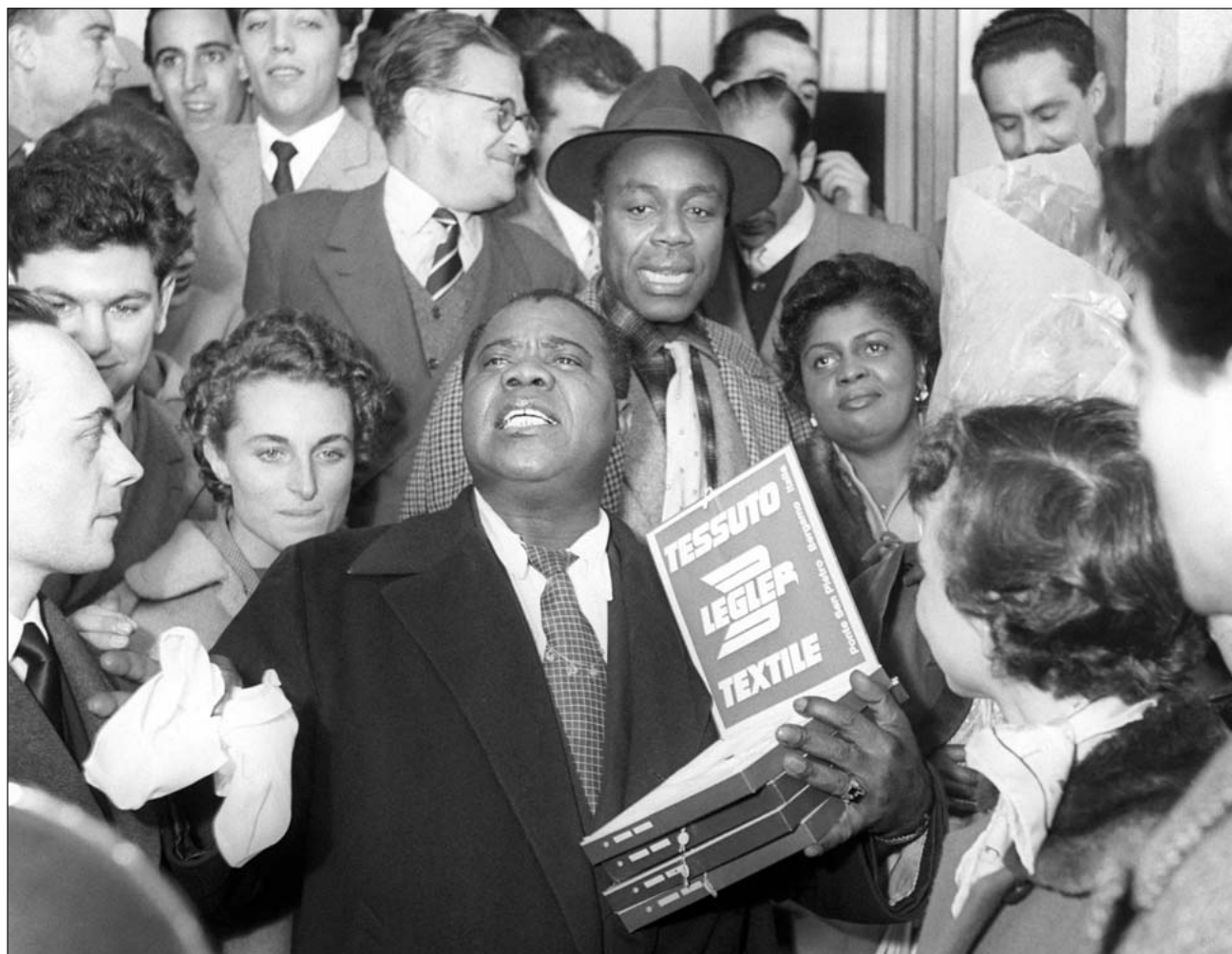
And it is the soul after all—be it the Democratic party’s, America’s, yours, or even mine—that Williamson is most concerned with. After a question on the compatibility of spirituality and politics, posed toward the end of the forum, Williamson grows a little quieter, a little softer, assuming her spirit-guide mantle yet again. “Spirituality is the path of the heart, it should influence everything we do.” She concludes, simply, “We need a politics of conscience, we need a politics of heart, we need a politics of love.”

As we file out of the Woman’s Club—our political apathy most heartily rebuffed, a nascent sense of brotherhood among us, the energy of a newfound love for our fellow man propelling us merrily toward the parking garage next door—a bearded, burnt-out-looking man sporting a grungy flannel under his “Marianne for Congress” T-shirt asks if anyone can give him a ride to a place called Café Gratitude in Venice. An awkward silence ensues. Nobody in the crowd responds, or even makes eye contact with him, doing their best to ignore his existence.

And so it is. ♦



A recent Williamson title



Louis Armstrong arrives in Milan on a USIA tour (1959).

The Picture of America

To see ourselves as others see us, diplomatically. BY SAM SCHULMAN

Martha Bayles, one of the great unsung critics of the baby boom generation, has written a book that is unusual for her. This is a brisk, how-policy-has-gone-wrong-and-what-to-do-about-it book, which conceals in its pages something more: a brilliant and courageous meditation on the difficulty of communication between mod-

Sam Schulman is a frequent contributor to THE WEEKLY STANDARD.

Through a Screen Darkly
*Popular Culture, Public Diplomacy,
and America's Image Abroad*

by Martha Bayles
Yale, 336 pp., \$30

ern and traditional societies. These difficulties, in turn, suggest that the values we regard as universally desirable may not be universal, or even desirable—and we certainly aren't living by them.

The argument is simply told. Public diplomacy is vital to American foreign policy. It wins us friends in the world, explains our ideals to skeptical foreign audiences, and shows that we are serious about those ideals. Ever since the United States entered World War I, we've conducted public diplomacy with varying levels of finesse, funding, and commitment.

Unfortunately, funding and commitment withered away with the passing of the Soviet Union. The Clinton

EVERETT COLLECTION / MONDADORI PORTFOLIO / MARIO CARRIERI

administration, in its first term, proposed cutting the budget for Radio Free Europe. In 1999, the United States Information Agency (USIA) was shuttered altogether by legislation designed by Senator Jesse Helms, Vice President Al Gore, future vice president Joe Biden, and Secretary of State Madeleine Albright. The act distributed the functions of USIA, like fragments of Orpheus' body, among lower-level officials.

Martha Bayles's argument is that defunding public diplomacy in the 1990s didn't halt our image-making activity; it merely privatized it: "The entertainment industry [took] over the job of communicating America's policies, ideals, and culture to a distrustful world." But the entertainment industry had changed since the 1940s and '50s, when it had worked hand-in-hand with Washington to produce an image of America that was noble, heroic, and disinterested.

Communications technology has changed from broadcast to satellite to Internet, and the post-USSR target audience has changed as well. It is located in different countries and has different problems. What's happened in Hollywood is obvious. The creative output of America's movie studios and television producers is of dismal quality: vulgar, sexualized, and violent. When it has a political message, it is usually anti-American; when it doesn't, it is casually cynical about the motives and honesty of people in business, government, science, and journalism.

The entertainment industry doesn't necessarily intend to broadcast an image of American society that is devoid of culture, faith, and morality, and inhabited by deracinated, materialistic hedonists. But allowing the entertainment business to assume the job of communicating our image to the world has been a disaster for foreign policy. When a president speaks about freedom, Martha Bayles asks, what does it suggest to a foreign public? "The political wisdom of the American Framers? The giddy personal freedom expressed in a movie like *Convoy*?" That was a late Sam Peckinpah CB/trucker/road-

revenge film that happened to be the first American movie the Communist party permitted into China in 1978—and it was a huge success.

American image-making was once a scarcity: Voice of America broadcasts had to evade jamming to reach their listeners—neighbors could denounce neighbors for listening—and Levi's and 45 RPM records sold at black-market prices. But technology and private enterprise have made it a drug on the market. Each episode of *Friends*—which Bayles finds epitomizes American civilization in the eyes of the world—has been seen 17 billion times, counting illegal downloads and DVDs. A taxi driver in Warsaw teases a professor of American culture: "A contradiction in terms!"

In the 1950s, George Kennan joked that, because the United States had no ministry of culture, the job fell to the CIA. Dwight Eisenhower had no André Malraux at his side, but we did send cultural assets abroad: Louis Armstrong, Leonard Bernstein, Van Cliburn. Americans have always had an uneasy feeling about highbrow culture—and pop culture as well. Art historians have been lecturing about Abstract Expressionism as a Cold War weapon since I was in graduate school, but Harry Truman nixed an exhibition of American painting that would have brought Jacob Lawrence to Europe as too advanced. When Ronald Reagan appointed Charles Z. Wick to head the USIA, an old hand declared that no one who had once been an arranger for Fred Waring should ever hold that post.

Still, our old hands completely missed the opportunity created by avant-garde rock in the late 1960s. The major dissident group in late-1960s Czechoslovakia assembled around an underground band inspired by (among others) Frank Zappa's *The Mothers of Invention*. "We missed the 1960s," another old hand tells Bayles. In 1979, the USIA sent Frank Sinatra to Egypt.

From what I've described here, *Through a Screen Darkly* might sound like a think-tank analysis combined with an exercise in conservative movie-bashing.

It is not. Bayles helps us to experience the image of America through the eyes of foreign audiences—people she has met in Indonesia, China, Hong Kong, India, the Emirates, Egypt, and Russia—who are avid consumers of American popular culture. And as they view, they judge.

Bayles discovers, for example, that *Friends* is America's calling card to the rising generation in a world of emerging modern economies. It fascinates because it shows a paradise they don't have: a space of freedom between education and adult responsibility that exists nowhere else, and is filled entirely with pleasure. After a year as an exchange student in the United States, a young Egyptian tells Bayles that she "was astonished to see how much time Americans spend with their families." She had had every reason to think that there were "no families, just individuals" in America. In China, young adults study episodes of *Sex and the City* as if the show were a manual for conducting adult sexual relationships, delivering its advice in a world that excludes children, parents, and grandparents of adults.

But American television can do much worse than fail to convey family warmth, idealism, and public-spirit-edness: It can support an unjust status quo. Russian television has specialized in imitations of American trash-talk and reality shows, and the authorities encourage them. Bayles argues that the format is inherently antifreedom: Vulgarly on television demoralizes Russian society and reinforces its crude self-image. Vladimir Putin is delighted when reform candidates ask Russians to turn off the TV, get out, and demonstrate: Doing so reveals them to be effete, Westernized Muscovites. ("That way the 'real Russia' can hate them all the more," a Russian writer tells Bayles.) Reality shows are useful to tyranny because they have "encouraged ordinary people to accept—even welcome—being spied upon." This kind of programming "reinforces the power of authoritarian government in countries where ordinary men and women are already cynical and distrustful."

Bayles is sore about what's happened to American entertainment and our government's inability to restart public diplomacy, and she has interesting ideas about what has gone wrong. But the emotional focus of *Through a Screen Darkly* is not public diplomacy's message or medium; it's the audience that fascinates her. Broadly, she defines the target audience as consisting of "restive populations under authoritarian governments." They are largely, but not completely, non-Christian. And what distinguishes this audience from

believe to be ours: a grouping of utterly unmoored individuals with no human affections they can recognize, no religion, no sense of honor, and free of any social or family expectations. *Friends* must strike audiences in these societies as Samuel Beckett's plays struck Paris in the 1950s: depicting humanity stripped of everything human.

America's new image undermines our claim to speak for universal values, blue or red. *Through a Screen Darkly* is carefully friendly to figures in the Obama administration and conven-

In the eyes of Congolese women, for example, a *Desperate Housewives* image seems appropriate. Ensler's foundation uses royalties from *The Vagina Monologues* to build safe houses for women in a number of African countries; in war zones, they're a godsend. But in other areas, people think they tempt adventurous adolescent girls to run away from their families. This doesn't help women as much as it injures what "the Congolese value most: the unity of their family and community." Even in wartime, feminism's agenda strikes Congolese women as bizarre, since they mourn when *anyone* in their family is butchered:

Do we want to tell the Congolese that we care more about their wives and daughters than about their husbands and sons? Our preoccupation with individual freedom, including sexual freedom, over other, more communal claims, can make freedom less not more desirable.



'Friends is America's calling card to the rising generation . . .'

its Cold War predecessors is not any specific religious difference, but the nature of its relationship to religion as part of a traditional way of life that is all-encompassing.

Our fellow *Friends*-viewers abroad are bound by ties of kinship, custom, and belief closer to those of continental Europe during the *ancien régime* than to those of the world of the Founders—or even *our* fathers. Our devout neighbors may be offended by *Friends*'s treatment of casual sex and immodesty, but the shock of a traditionalist family viewing it is of another order. People bound up in family and clan relationships, who feel duties to parents, siblings, and spouses, and who have regional, tribal, and sectarian loyalties, see a world they can hardly believe, but which they

tionally scornful of George W. Bush's aim to promote democracy. But that doesn't protect Hillary Clinton from some of Bayles's harshest criticism—for the "gender agenda" of her term as secretary of state, for example.

"Mainstream feminists like . . . Clinton are secure in an image of themselves as good mothers, sisters, wives, daughters, and friends . . . educated and respected," she writes. But when Clinton (or Eve Ensler, another of Bayles's targets) brings her feminist balm to traditional societies in Africa and Asia, she speaks to an audience with a very different picture of the typical American woman: "rampantly materialistic, promiscuous, contemptuous of men, and indifferent to such duties as caring for children and the old."

Bayles understands that the golden age of American public diplomacy is over. The Cold War audience yearned to be free; our mission was to ensure that they were well-informed and to urge them to be hopeful yet patient. Today's audience has far more in common with its rulers than did the peoples of the Warsaw Pact, who were subject to an alien Communist regime. And today's regimes can reassert their authority by mobilizing against a common threat to ruler and ruled: a godless, rootless America. Our gospel of freedom and individual possibility has little purchase in places where familiarity with our popular culture demonstrates that the outcome of our gospel is loathsome.

Bayles's genius here is not just in dissecting the pathology of the pop-culture mind, but in revealing its effects on the world at large—in matters of war, peace, freedom, and human relations. She is also open to the idea that the entertainment industry's distortions and libels have a degree of truth to them. And that's the bad news: America's image, as distorted in Hollywood's mirror, may be telling us something unlovely about ourselves.

◆ WARNER BROS. TELEVISION / EVERETT COLLECTION

The Connoisseur

Bernard Berenson and the appreciation of art.

BY JAMES GARDNER

Like certain wines that lose their flavor beyond the region in which they were produced, Bernard Berenson (1865-1959) makes sense only in the context of the Belle Époque, which formed him and which he was destined or doomed to outlive by half-a-century. A dandy and an aesthete, he was a contemporary of Oscar Wilde, whom he knew, and a disciple of John Ruskin and Walter Pater, whose injunction—"to burn always with this hard, gemlike flame"—he took thoroughly to heart. As he wrote at the age of 92, "I wanted to become and be a work of art myself."

Certainly Berenson retained an air of relevance to the very end of his long life, and streams of fellow aesthetes paid him elaborate court in his Tuscan villa, I Tatti, where he lived for 60 years. By that time, he had achieved such celebrity that even people who couldn't distinguish a *predella* from a breakfast tray understood that he was somehow important. To this day, Berenson remains famous—if not exactly relevant—and he may well be the only expert on Old Master painting to be known, or to have ever been known, beyond the hierophantic precincts of his profession.

As proof of this enduring consequence, a new biography has just appeared in Yale's Jewish Lives series. Its author, Rachel Cohen, teaches creative writing at Sarah Lawrence. This brief book does not pretend to break new ground or to divulge the fruits of original research. Rather, it depends on the more thorough biographies that came out in the 1970s and '80s

Bernard Berenson

A Life in the Picture Trade

by Rachel Cohen

Yale, 344 pp., \$25



Bernard Berenson (ca. 1955)

by Meryle Secrest and Sylvia Sprigge, as well as the business records and correspondence, only recently made available, of Lord Duveen, who was, in essence, Berenson's employer.

Basing her efforts on these earlier works, Cohen has forged a pleasing and readable synthesis. On balance, she appears to admire and even to like Berenson, though not without reservations, which is hardly a foregone conclusion among the more recent writers to have examined his career.

Many of them are suspicious of his success, both intellectual and monetary, even as they are put off by his posturings. By all accounts, he was a compelling figure in person; but such qualities as he had rarely shine forth from his writings, which tend to be

marked more by the mannerisms of the Edwardian age than by the acuity of his judgment. As a result, few people read his books today, and the age he embodied—notwithstanding the marketable appeal of *Downton Abbey* and the like—tends to be dismissed as an effete prelude to something better.

A greater source of ill-will is the subject of his religious convictions, which are surely relevant to a book published under the rubric of "Jewish Lives." Born Bernhard Valvrojenski in Butrimonys, a small town in Lithuania, Berenson was originally a Jew, but converted to Episcopalianism at age 20, and to Roman Catholicism soon after settling in Italy about 10 years later. It does not appear, however, that he was especially religious, certainly not in any conventional way. He went from being an assimilated Jew in Boston to being a tepid Protestant and then a noncommittal Catholic. But what has proved most damning to his reputation is one of his earliest writings, a survey of contemporary Yiddish literature published in the *Andover Review* when he was 23.

It is only through the study of Jewish institutions and literature that we shall begin to understand the puzzling character of the Jews. Begin to understand, I say, for comprehend them we never shall. Their character and interests are too vitally opposed to our own to permit the existence of that intelligent sympathy between us and them which is necessary for comprehension.

This passage has been widely quoted, and it would be difficult to catch a man in a more damning act of posturing. But there are mitigating circumstances. Berenson majored in Hebrew at Harvard, and his final thesis was titled "Talmudic-Rabbinical Eschatology." The fact that he was inclined to write about Yiddish literature at all, and that he read it in the original language, attests to no ordinary interest in Judaica. And yet, in the overwhelmingly anti-Semitic society in which he lived, he felt, as Heine and Disraeli had, that conversion was the only path to success. Furthermore, he rarely tried to conceal his Jewish roots, and you

James Gardner recently translated *Vida's* *Christiad* (I Tatti Renaissance Library).

may be sure that all who knew him—anti-Semites most of all—were fully aware of those roots.

In any case, there was surely more to the man than his religious convictions. One of the great appeals of Berenson's life is the virtuosic correspondence he maintained for much of a century with over 1,200 correspondents, among them some of the most brilliant luminaries of the age. Cohen has mined these letters and brings to life Berenson's friendships with Edith Wharton, Bertrand Russell, André Gide, and Marcel Proust, among many others—not to mention his long marriage and numerous affairs.

But all of these considerations are, of course, ancillary to those attributions of paintings and drawings upon which Berenson's fame and greatness principally rest. Though not all of his attributions have stood the test of time, he did more than any other scholar to establish the study of Old Master painting on a scientific basis. Before him, the field was a morass of subjective assessments and debatable misconstructions.

Whereas most art historians—such as they were at that time—were rooted in the study of documents and literature, Giovanni Morelli, an Italian art critic, had devised, about a generation earlier, a more scientific form of connoisseurship. Through the discovery of recurring stylistic motifs that were unique to a given artist's work (the consistent way in which said artist rendered a fingernail or an eye, for example), it was possible to arrive at more solid attributions than had been previously possible. But if Morelli created the theoretical framework for this study—comparable to contemporary advances in the study of ancient texts—Berenson was the first to make a profession of it and to master thoroughly the corpus of Old Master painting, especially that of 15th-century Italy.

Now it is the unfortunate fate of those who make their living in that line of work that, when they are wrong, they look foolish, and when they are right, their worthy contributions merge insensibly into the general mass of received truth. But even

this consideration cannot conceal the size, quality, or revolutionary initiative of Berenson's achievement: Quite simply, no one before him had ever studied the Old Masters, or any art, with such single-minded application over 70 years.

There have been recurring rumors that Berenson intentionally misattributed paintings simply to earn his commission from Lord Duveen. This does not appear to be the case. Surely, he was not above dressing a mediocre work in purple prose if he thought that would move merchandise; but he appears to have stopped far short of outright misattribution. He took art and himself far too seriously ever to perpetrate such an unseemly act.

But these accusations attest to one of the unlovely secrets of the trade in old paintings: In most cases, attribution is an educated approximation. Unless

a work is signed, and its provenance documented back to the studio of its creator, 100 percent certainty is impossible. Within the capacious indeterminacy of that approximation, many a dealer, and more than one scholar, have lived out their careers in affluence. And they have done so with a semi-clear conscience, since the work in question may, indeed, be by the painter to whom they attribute it—and in most cases the attribution (by the very nature of reality itself) is not susceptible to definitive proof or disproof.

Yet even when this ineradicable subjectivity is understood, the fact remains that, before the more recent application of X-ray imaging and chemical analysis to old paintings, Bernard Berenson did more to illuminate this crucial corner of human culture than any single scholar had done before him, or is likely to do again. ♦



Mr. First Amendment

Congress shall make no law abridging
Floyd Abrams's brief. **BY GABRIEL SCHOENFELD**

What are we to make of Floyd Abrams?

For more than five decades he has been toiling in the vineyards of the First Amendment, as a practicing attorney, a professor at the law schools of Columbia and Yale, and an apostle of free speech and a free press, writing and lecturing extensively in defense of his vision of both. He has appeared as counsel in numerous landmark cases in virtually every area of First Amendment law, from government secrecy to libel to campaign finance regulation. He holds the unique dis-

Gabriel Schoenfeld is the author of Necessary Secrets: National Security, the Media, and the Rule of Law and, most recently, A Bad Day on the Romney Campaign: An Insider's Account.

Friend of the Court
On the Front Lines
with the First Amendment
by Floyd Abrams
Yale, 488 pp., \$32.50

Speaking Freely
Trials of the First Amendment
by Floyd Abrams
Penguin, 352 pp., \$23

tion of being the only lawyer in America known to have appeared before the Supreme Court wearing only one sock—and in the Pentagon Papers case, no less. Most of all, he is someone who has thought long and hard about 14 words—"Congress shall make no law . . . abridging the freedom of speech or of the press"—

that are not only central to our national life, but are the continuing source of fierce controversy and litigation.

Abrams has just published *Friend of the Court*, a collection of his writings and speeches on an array of critical issues; it follows *Speaking Freely* (2005), in which he ranged over some of the key cases of his career, including the tale of the missing sock. Abrams is a staunch, though frequently unorthodox, liberal, with a life project of protecting and expanding the scope of legal expression under American law. For anyone—conservatives very much included—interested in the continuing controversies surrounding the First Amendment, his writings are an excellent place to start.

In both volumes, Abrams reconstructs the 1971 Pentagon Papers case. Together with Alexander Bickel, he was the outside counsel brought in to defend the *New York Times* against Richard Nixon's ill-conceived effort to stop the paper from publishing the trove of purloined secrets it had obtained from former Defense Department insider Daniel Ellsberg. The story of the battle over the attempt to impose a prior restraint on the newspaper—the first in American history—is gripping no matter who tells it, and Abrams's pen brings it vividly to life yet again. After telling the tale from his participant's vantage point, he steps back to reflect on its legacy. And he settles on a number of consequences, one of which is the emergence of a new era of "press militancy," or adversary journalism, as others have called it. A second is the case's dramatic demonstration to the public of the "absurdity" of a classification system that cloaked a wealth of innocuous information in official secrecy.

But it is the legal ramifications of the decision that, to Abrams, surpass all else in importance:

Up to that time prior restraints had historically been viewed as the single most intrusive and dangerous form of government conduct threatening freedom of expression. In the Pentagon Papers case, that notion was considered in the context of publication that a majority of the

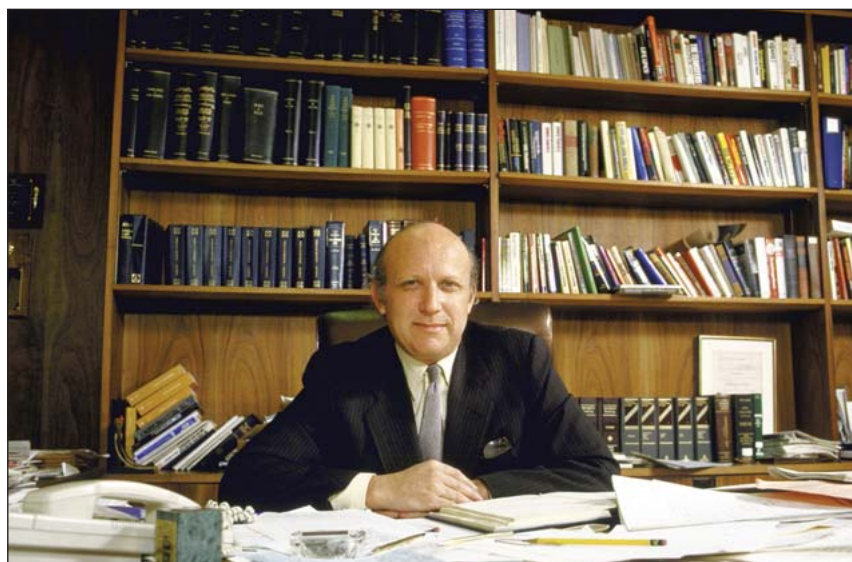
Supreme Court believed would do significant harm, yet still held was protected by the First Amendment.

This paved the way for our current legal order, in which the kind of disclosure that would warrant halting the presses in advance has been narrowed nearly to the vanishing point.

If prior restraint was stripped from the government's legal arsenal by that momentous ruling, the possibility of prosecution for publishing a national

WikiLeaks to hundreds of innocent individuals who had spoken to American diplomats in places like Cambodia and West Africa and were placed in jeopardy by the indiscriminate publication of documents containing their names. But despite that and other transgressions, if Assange had been indicted under the espionage statutes, Abrams expresses the hope that he would have been acquitted.

His reasoning is straightforward: By making it plain for the first time that



Floyd Abrams in his office (1986)

security secret after the fact remains. No such prosecutions are recorded in our history, and the question of their constitutional status, Abrams acknowledges, remains open. But what has long been only a theoretical possibility has lately had a close encounter with becoming real. A grand jury spent the past three years investigating Julian Assange and WikiLeaks for their role in obtaining and publishing hundreds of thousands of classified documents provided by the convicted leaker Bradley Manning. In the end, the Obama Justice Department decided not to move forward with an indictment of Assange; but if they had, the proceedings would have assumed a significance for the future of the First Amendment on par with the Pentagon Papers case.

Abrams finds "much to deplore" about Julian Assange and his operation, pointing to the damage done by

the espionage statutes can be deployed against someone for "publication" of government secrets, Assange's conviction would severely injure the standing of American journalists who engage in the same activity on a daily basis (albeit in a far more discriminating way). In this respect, it is WikiLeaks's "misconduct" that, by courting prosecution, could have wound up "leading to more than one form of harm."

Switching gears from national security to modern art and its discontents, Abrams offers an engaging account of New York mayor Rudolph Giuliani's collision with the Brooklyn Museum over its 1999 exhibit "Sensation: Young British Artists from the Saatchi Collection." Among other objects included in the show was a painting by a Nigerian artist titled *The Holy Virgin Mary*, constructed partly out of elephant dung.

The mayor of New York, calling the exhibit “sick stuff,” attempted to cut off all city funding to the Brooklyn Museum—about a quarter of its budget—and evict it from its premises until it closed the show. Abrams led the museum’s successful defense.

One high point in that effort was the deposition of Joseph Lhota, then deputy mayor, in which Abrams’s team inquired how the city went about judging which works were unsuitable for display in the museum.

Question: In selecting the works that you deemed to be inappropriate, how did you go about doing that?

Answer: I asked myself the following question. One, do they desecrate anyone’s religion? . . . The second question is: Would I like my 8-year-old daughter to see this work of art? . . . And the third question that I asked was: Would anyone who believes in animal rights be offended?

For Lhota, things went downhill from there: “Asked if Michelangelo’s David was the sort of work of art that his 8-year-old daughter should see, Lhota replied that it was not. Could it be displayed at the Brooklyn Museum? Yes, said Lhota.”

In short order, such tangles revealed that the city had absolutely no standard at all by which to judge what art was suitable for display, not even the standard set by Lhota’s 8-year-old daughter. Shortly before Giuliani was scheduled to submit to what promised to be an equally eviscerating deposition, the city hoisted a white flag and settled the case in full retreat.

Whatever one’s appraisal of the items on display in the Saatchi collection (elephant dung, Abrams notes, is venerated in Africa for its reputedly regenerative properties), this outcome, he argues persuasively, was both necessary and important. If the case had gone in the other direction, the law would have henceforth enabled a New York mayor to require any museum or library or publicly funded institution to remove any work of art or book of which he or she disapproved. No doubt, many partisans of Giuliani would have enjoyed watching him

wield that power during his tenure, especially against objects like *The Holy Virgin Mary*. But would they also enjoy watching it being wielded by New York’s new Sandinista-supporting, soak-the-rich mayor?

The question answers itself. Censorship is a sword that can cut in any number of directions, which is exactly why government officials, as Abrams maintains the First Amendment demands, should be kept far away from

If the Brooklyn Museum case had gone in the other direction, the law would have henceforth enabled a New York mayor to require any museum or library or publicly funded institution to remove any work of art or book of which he or she disapproved.

such decisions. This is hardly to say that Abrams believes the First Amendment permits anything and everything to be said or printed. He allows that the First Amendment is compatible with restrictions on expression in a number of realms, such as libel, copyright infringement, and obscenity.

The subject of censorship brings us to *Citizens United*, the 2010 Supreme Court case striking down the McCain-Feingold campaign finance reform legislation. This decision, barring the government from limiting political spending by corporations and unions, was greeted with shock and outrage in the liberal circles where Abrams dwells. His most notable client, the

New York Times, denounced the ruling as “disastrous” and “terrible.” Jeffrey Toobin, the *New Yorker*’s legal analyst, judged the opinion to be the product of “bizarre legal theories,” while Howard Fineman of *Newsweek* excoriated it as “one of the more amazing pieces of alleged jurisprudence that I’ve ever read.”

Abrams is of a different mind. Indeed, not only did he dissent from the liberal consensus, he was among the leaders of the opposition. In 2003, he represented Senator Mitch McConnell in an unsuccessful challenge of the McCain-Feingold law. When the case was re-argued, and the law was successfully overturned by a five-four vote in 2010, Abrams filed an amicus brief and argued orally on behalf of McConnell before the Supreme Court. He notes that the law would have criminalized advertisements run by, say, the Sierra Club against a congressman who favored logging in national forests; or the National Rifle Association for publishing a book exhorting the public to vote against a candidate who opposes their stance on gun control; or the American Civil Liberties Union for creating a website telling voters to support a candidate with the best record in favor of free speech. Those who persisted in engaging in such speech in violation of the statute could be fined and/or sent to prison for up to five years.

Given that McCain-Feingold banned political speech in an election context—expression that is the heart of the First Amendment—it is difficult to conceive of a law that is more directly in conflict with the Constitution. It is sobering to contemplate the fact that the nation was saved from this travesty by the vote of a single justice.

The pages Abrams devotes to this dark chapter in the history of free speech are among the most affecting in both volumes. By turns, one senses Abrams’s incredulity, disappointment, dismay, and barely suppressed anger at erstwhile allies who enthusiastically betrayed what had hitherto been their primary cause.

“The same journalists,” he said in a 2010 speech, “who would go to the

barricades to defend the right of Nazis to march in Skokie, or who would write editorials of the strongest sort defending the rights of pornographers to put their stuff on the Internet, or people engaged in the vilest sort of hate speech to have their say on the Internet” were now supporting a law that would criminalize the very kind of speech that deserves the strongest possible protection in our constitutional system. They would effectively gut the First Amendment.

Even as Abrams acknowledges that he was unprepared for the “fury of the critics of the opinion and the fierceness of their criticism,” he saw the shift coming. Indeed, as far back as 1997, he had written an article in the *Columbia Journalism Review* warning that a transformation was underway. In “Look Who’s Trashing the First Amendment,” Abrams observed that the First Amendment was once again under attack, “but this time its more consistent attackers are on the left. And many of its most powerful defenders are on the right.” In the eyes of liberals, he wrote, “the wrong people are speaking; they have too much money behind them; they are saying too much,” and they need to be silenced by legislation. The liberals who think like this, argues Abrams, are “at war with the First Amendment.” It was now “conservatives defending First Amendment interests.”

This is bracing stuff coming from a liberal. And there is a lot of it in Abrams, along with a lot of erudition and courage. In defending the First Amendment from all corners, he has the virtue of intellectual consistency, which his example shows is not always a hobgoblin and not always the inhabitant of small minds.

If there is a notable deficiency in these volumes, however, it may spring from Abrams’s role as a practicing attorney, and the obligations to his clients that that role brings. Thus, while Abrams freely dispenses criticism of those with whom he disagrees or of whom he disapproves—he uses the words “reckless,” “irresponsible,” and similar terms of disapprobation with refreshing frequency—one seldom

comes across those words (or, indeed, any criticism at all) applied to anyone at the *New York Times*, or to a variety of highly problematic episodes that, at the very least, cry out for discussion.

Thus, while it is well and good to hear Abrams’s withering attack on WikiLeaks for its indiscriminate publication of government secrets, one would like to know what Abrams makes of behavior closer to home, such as the *New York Times*’s 2006 disclosure of the workings of a per-

fectly legal, but highly classified CIA/Treasury program to track the movement of terrorist funds. Or the decision of *Times* reporter James Risen to publish, in his own book, top-secret material that the editors of the *Times* had determined, on grounds of damage to national security, should not see the light of print. One puts down these engrossing volumes with a feeling of regret, even deprivation, knowing that some additional fascinating chapters remain unwritten. ♦

BCA

Dance to Excess

Bob Fosse, demon choreographer.

BY GINA DALFONZO

There’s an anecdote here that perfectly captures the choreographer-director Bob Fosse (1927-1987). At the end of the musical *Pippin* (1972), the hero is supposed to say he feels “trapped but happy” with his new family. Over the protests of his team, Fosse cut the last two words, deliberately sending audiences out on a sour note.

“Bob,” says composer Stephen Schwartz, “was imposing his own psychological demons on a story that in many ways couldn’t support that.”

And indeed, Fosse had demons. Frequently molested and humiliated in the burlesque clubs where he worked as a teenager, and never forgiving his parents for not shielding him, he carried a darkness that manifested itself in twin obsessions with sex and death. Cleverly, Wasson reflects this latter obsession in his chapter titles, which count down from “Sixty Years” to “One Hour and Fifty-Three Minutes.”

Little of this darkness was apparent when Bob Fosse was a fresh young face in Hollywood. *Variety* had called

Gina Dalfonzo is editor of BreakPoint.org and Dickensblog.

Fosse

by Sam Wasson

Houghton Mifflin Harcourt, 736 pp., \$32



Shirley MacLaine, Bob Fosse (1969)

him a “prospect for Gene Kelly roles” and he danced brilliantly in a few MGM musicals, most notably *Kiss Me Kate* (1953). But he lacked Kelly’s cheerful confidence. Fosse was driven

by insecurity, and Wasson posits that the classic Fosse style—hat pushed over the face; tiny, twitchy moves; a focus that was “down and in” instead of “up and out,” as Donna McKechnie puts it—was rooted in his shyness.

If Hollywood was unwelcoming at first, Broadway was different. Hired to choreograph *The Pajama Game* (1954), Fosse instantly made his mark on musical theater, and his shyness didn't keep him from pushing for (and getting) a codirector credit. As his career blossomed, and he began directing films as well as stage shows, he fought for more control—until he was writing as well as choreographing and directing. As his influence increased, Fosse's shows darkened. Relatively bright musicals like *Damn Yankees* (1955) and *Sweet Charity* (1966) gave way to the bleak *Chicago* (1975) and the film version of *Cabaret* (1972, which won him an Oscar).

“He was draining the color,” Wasson writes of the *Chicago* dances. “These were not people but bodies, automatons. Their eyes were still and mean.”

Fosse went on to make a morbidly autobiographical film, *All That Jazz* (1979), in which, essentially, he filmed his own death eight years before it happened—and in which he callously let the young actor Keith Gordon suffer much the same kind of humiliation he had endured in those burlesque clubs. Yet the darkness couldn't repel those who cared for him. His first two wives never got over him; his third wife, Broadway legend Gwen Verdon, filed for separation after catching him “with a couple German girls” during the making of *Cabaret*. Still, until Fosse's death, Verdon kept starring in his productions, assisting with his choreography, and catering to his whims.

For Fosse was a tough habit to break. His genius, charm, and empathy with his dancers proved irresistible to scores of them—even though, for him, the line between consent and harassment barely existed. Dancer Phyllis Sherwood recalled how, when she was 16, Fosse came to her hotel room and exposed himself. But, she adds, “We laughed about it afterward. . . . He was such

a sweet guy—no matter what he did, you couldn't stay that mad.” Her fellow dancer Candy Brown contends that “he never had a sleaziness about him.”

In fact, Fosse's behavior was very nearly the dictionary definition of sleazy. Cheryl Clark walked off the set of *All That Jazz* when Fosse tried to make her dance topless, telling him, “I've seen you exploit girls since I was 21 years old and you're not going to exploit me.” Fosse called in another dancer, Sandahl Bergman, and, after she did the number, he tried “pimping” her (Wasson's word) to one of the producers. With women, as with work, Fosse was always pushing to see how much he could get away with.

Of course, these things were thought about differently back then.

But one would hope that a contemporary biographer might achieve a little critical perspective. Instead, Sam Wasson—so perceptive about Fosse's work—views Fosse's personal life through tinted glasses, claiming that “the net result of Fosse's sexual involvement was mostly positive.” Indeed, he speaks of Fosse building “a family”—and it's strangely true that various wives, mistresses, and one-night stands formed genuine friendships. His widow Gwen Verdon, daughter Nicole, and longtime girlfriend Ann Reinking worked harmoniously together on Fosse-related projects after he died. If this was “family,” it was a *Sister Wives* sort of setup—with Fosse, even after death, very much the man in charge. ♦

BCA

Fallen Idol

Woody Allen and the culture of celebrity.

BY JOHN PODHORETZ

Successful entertainers are often awful people. If you put fame, wealth, and narcissism in a blender, the resulting brew can be toxic. Fame causes ordinary folk to worship the entertainer and to view him as a superior being to be served. Wealth provides the means and the opportunity for indulgence. And his narcissism makes it all seem natural, appropriate, deserved.

We know this. Everyone knows this and always has. It's why, in the 1930s, MGM employed two notorious fixers, Eddie Mannix and Howard Strickling, to throw their weight (and a lot of bribe money) around Los Angeles in order to keep the peccadilloes of their studio's talent out of the press.

Since the advent of the *New York Post's* Page Six in 1977, we've been living in a time when the horrific foibles

of celebrities are reported as readily as the fripperies of the clothes they wear. This hasn't, in any way, derailed celebrity culture—quite the opposite. The audience for celebrity gossip has grown, and the attention to misconduct has given some stars a different but sexier kind of fame—notoriety. Celebrities are (as *Us* magazine puts it in a photo feature of stars buying groceries and driving cars) “just like us.” Only more so. They live on a larger scale, they do things bigger, and when they transgress, they even do that in a big, flashy, unforgettable way.

No wonder, then, that the word “idol” has come to be associated with celebrities, because what the public does with them is a modern form of idol worship. And the case of Woody Allen, who has been famous for a half-century and revered for 35 of those years, is the cautionary tale of our time on the larger social costs of cultural idolatry.

John Podhoretz, editor of Commentary, is THE WEEKLY STANDARD's movie critic.

Allen finds himself at the center of a media storm these days. It is the same storm he unleashed upon himself and his family and the world more than 20 years ago, when we learned he had taken naked photographs of the adopted daughter of his longtime consort Mia Farrow—who was also the mother of his three children, two of them adopted. One of those adopted children, called Dylan, claimed then, and has restated her claim as an adult, that Allen molested her when she was 7 years old. The accusation, which surfaced in the course of bitter custody proceedings, was seriously investigated at the time. No charges were brought.

Another adopted Allen-Farrow child, Moses, says the allegation is untrue. He was 15 at the time. The third Allen-Farrow child, Ronan, who was then just a baby, says the allegation is true. Dylan's account, published recently in a letter to the *New York Times*, is powerful. No one can doubt she believes it happened. But there have been too many cases of false charges of parental sexual abuse and memory of such abuse to simply take her word for it. The nanny who worked for Farrow at the time wrote a book in which she said she hadn't "the foggiest idea" whether the molestation had occurred.

Unless Allen confesses, or Dylan recants, we will never know the truth. Neither is likely to happen. But what this nightmarish business, being played out in public, brings to mind again is this: Woody Allen slept with and took pornographic photographs of the teenage sister of his three children, the daughter of his all-but-common-law wife. His conduct was unspeakable—and when Walter Isaacson, then editor of *Time*, asked Allen about it, he replied, famously, "The heart wants what it wants." He was 56 years old.

Really, what he was saying was this: *I can because I can*. Allen was an idol, perhaps the idol, of an entire class of his fellow New Yorkers, his fellow Jews, and his fellow skeptical liberals. There was almost nothing his admirers *didn't* admire about him. They

loved him because he was funny, because he wanted to produce serious art in the style of the great European filmmakers, and because he played jazz at a club every Monday night. They loved him for writing *New Yorker* stories, and they loved his relationship with Mia Farrow.

The year before the photos came out, Allen's slavish biographer, Eric Lax, published a fulsome article in the *New York Times Magazine* about the wonders of Allen and Farrow's coupledness, then

her. But that was not the impression Lax's article, and other mythologizing portraits of prescandal Allen, gave off. No, the sense of this and other portraits-without-blemish was that Allen was practically perfect, a fully rounded human being with wit and gravitas, a moral sense, and deeply bourgeois values.

In retrospect, Allen's response to the scandal was pitch perfect. He put his head down. He married Soon-Yi. He just kept working. He made movie



Woody Allen (2013)

11 years in duration. It was "not a conventional union," he said, pointing out that they lived in separate apartments across Central Park from one another. But, Lax wrote, in a rather striking passage, "Few married couples seem more married. They are constantly in touch with each other, and not many fathers spend as much time with their children as Allen does. He is there before they wake up in the morning, he sees them during the day and he helps put them to bed at night."

Yes, Allen was even admired as a father. Later, when people accused him of pseudo-incest in his dalliances with Mia's daughter Soon-Yi, his defenders would say he had barely known the girl, hadn't spent any time with her, had had nothing to do with

after movie. What he had done was not exactly forgotten, but his unflagging industry eventually paid off with a reputational renaissance over the past decade. He was again becoming an idol—as was indicated by his decision to accept (though not in person) the Cecil B. DeMille Award at the Golden Globes in January. Big mistake, for that is what triggered the Farrow family's wrath and has sunk his reputation yet again.

The heart wants what it wants, as Allen said. Well, Dylan Farrow has a heart too, and her heart wants Allen destroyed. Her heart's desire will not be fulfilled. But she has done us all a favor by reminding us that idol worship is what it has ever been: a means of making excuses for evil. ♦

"Hillary Clinton called the Benghazi terror attack the 'biggest regret' of her tenure as secretary of state on Monday, a message she's expected to emphasize, as she ponders a 2016 White House run."
—The Hill, January 27, 2014

PARODY

February 15, 2014

Hey, Diary—

sooo, totally crazy times lately! Everyone seems to really want me to run for president—can you believe it?!?! 😊
I guess I did a pretty good job at State, though there are some things I regret that I really need to get off my chest.

☹️ My Biggest Regrets — State Department Edition!!! ☹️

1. ~~Missed, like, all of Breaking Bad~~ Benghazi (duh!)
2. Never should have let Bill come on that trip to Thailand with me!
3. Should not have eaten whatever that was in Kazakhstan! 😊
4. Definitely shouldn't have told Lyudmila Putin that I thought Vlad was handsome! Psycho bi-atch!
5. ~~Benghazi~~ Missed Breaking Bad!

Whew! Feel so much better!



~~Mrs. President Clinton~~

Mrs. President Hillary Clinton

Madam President Hillary Clinton

Madam President Hillary R. Clinton

Ms. President Hillary Rodham Clinton

Ms. President Hillary Rodham Clinton